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Frank J. Barry, Solicitor

INDEX-DIGEST
JANUARY-DECEMBER 1964

This index-digest covers all the published and all the important unpublished decisions and opinions of the Department of the Interior for the period from January 1 through December 31, 1964. It supersedes the index-digest for January-September 1964.

Decisions and opinions cited as appearing in 71 I.D. are published and copies may be obtained by subscription from the Superintendent of Documents, U.S. Government Printing Office, Washington, D. C. 20240. Other decisions and opinions are unpublished and copies may be obtained from the Office of the Solicitor.

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Wade McNeil v. Albert K. Leonard et al., Civil Action No. 2226, United States District Court for the District of Montana. Dismissed, November 24, 1961 (opinion). Order, April 16, 1962.

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Henry S. Morgan et al., 65 I.D. 369 (1958)

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Duncan Miller v. Stewart L. Udall, Civil Action No. 1066-63. Judgment for defendant, March 13, 1964. Appeal taken.

W. C. Wells v. Stewart L. Udall, Civil Action No. A-37-63, United States District Court for the District of Alaska at Anchorage. Suit pending.

Evelyn R. Robertson v. Stewart L. Udall, Civil Action No. 1561-63. Judgment for defendant, April 4, 1964. Appeal taken.

Estate of James Running Horse, IA-1048 (May 26, 1960)

Mary Hit Him Running Horse v. Stewart L. Udall, Civil Action No. 2166-68. Judgment for plaintiff, 211 F. Supp. 586 (1962). No appeal.

Louise Safarik, A-28307 et al. (April 22, 1960)

John J. King v. Stewart L. Udall, Civil Action No. 3903-60. Judgment for defendant, June 23, 1961. Affirmed, 304 F. 2d 944 (1962). No petition.

Louise Safarik et al., A-28562 et al. (January 26, 1961)

Louise Safarik v. Stewart L. Udall, Civil Action No. 1081-61. Judgment for defendant, June 23, 1961. Affirmed, 304 F. 2d 944 (1962). Cert. den., 371 U.S. 901.

Samuel Gary v. Stewart L. Udall, Civil Action No. 1202-61. Judgment for defendant, June 23, 1961. Affirmed, 304 F. 2d 944 (1962). No petition.

San Carlos Mineral Strip, 69 I.D. 195 (1962)

James Houston Bowman v. Stewart L. Udall, Civil Action No. 105-63. Suit pending.

B. F. Sandoval, Jr., A-29975 (June 12, 1964)

B. F. Sandoval, Jr. v. Stewart L. Udall, Civil Action No. 5779, in the United States District Court for the District of New Mexico. Suit pending.

Casper Joseph Schmand, Attorney in fact for Mike Swab, A-29451 (August 19, 1963)

Casper Joseph Schmand v. Stewart L. Udall, Civil Action No. 63-481, United States District Court for the District of Oregon. Suit pending.

Ann D. Schmidt, A-28349 (July 28, 1960)

Ann D. Schmidt v. Stewart L. Udall, Civil Action No. 3912-60. Judgment for defendant, April 11, 1961; no appeal.

Betty Mae Schober & John L. Richardson, A-29430 (January 8, 1964). Reconsideration denied, March 6, 1964.

John L. Richardson v. Stewart L. Udall, Civil Action No. 3975, in the United States District Court for the District of Idaho, Southern Division. Suit pending.

Joseph M. Schuck, A-28603 (August 16, 1961)

Joseph M. Schuck v. Secretary of the Interior, No. 16,682. Petition for review dismissed, December 15, 1961. No appeal.

Joseph M. Schuck v. Secretary of the Interior, Civil Action No. 1402 Tucson, in the United States District Court for the District of Arizona. Complaint dismissed, January 30, 1962. No appeal.

Joseph M. Schuck v. Roy T. Helmandollar, Civil Action No. 1402 Tucson, in the United States District Court for the District of Arizona. Judgment for defendant, March 19, 1962. No appeal.

Seal and Company, 68 I.D. 94 (1961)

Seal and Company, Inc. v. United States, Court of Claims No. 274-62. Judgment for Plaintiff, January 31, 1964. No appeal.

Stanley C. Soho, A-28135 (August 19, 1959), A-28135 Supp. (July 17, 1961), supplemented by decision dated February 1, 1963, by Director, Bureau of Land Management, approved by the Secretary March 18, 1963.

Robert W. Ferry & Irving Baker v. Stewart L. Udall, Civil Action No. 1648 Tucson, United States District Court for the District of Arizona. Judgment for defendant, September 3, 1963. Affirmed, 336 F. 2d 706 (1964).

Stanley C. Soho et al., A-28175 (April 11, 1960)

Albert Meeks v. E. I. Rowland, Civil No. 3461-Phx., in the United States District Court for the District of Arizona. Case dismissed, January 17, 1961. No appeal.

Southwestern Petroleum Corporation, et al., 71 I.D. 206 (1964)

Southwestern Petroleum Corp. v. Stewart L. Udall, Civil Action No. 5773, in the District Court for the District of New Mexico. Suit pending.

Standard Oil Company of Texas, 71 I.D. 257 (1964)

California Oil Company v. Secretary of the Interior, Civil No. 5729, United States District Court for the District of New Mexico.

James K. Tallman, 68 I.D. 256 (1961)

James K. Tallman et al. v. Stewart L. Udall, Civil Action No. 1852-62. Judgment for defendant, November 1, 1962 (opinion). Reversed, 324 F. 2d 411 (1963). Petition for rehearing denied, October 16, 1963. Cert. granted, 376 U.S. 961 (1964).

Texas Construction Co., 64 I.D. 97 (1957) Reconsideration denied, IBCA-73 (June 18, 1957)

Texas Construction Co. v. United States, Court of Claims No. 224-58. Stipulated judgment for plaintiff, December 14, 1961.

Estate of John Thomas, Deceased Cayuse Allottee No. 223 and Estate of Joseph Thomas, Deceased Umatilla Allottee No. 877, 64 I.D. 401 (1957)

Joe Hayes v. Fred A. Seaton, Secretary of the Interior, Civil Action No. 959-581. On September 18, 1958, the court entered an order granting defendant's motion for judgment on the pleadings or for summary judgment. The plaintiffs appealed and on July 9, 1959, the decision of the District Court was affirmed, and on October 5, 1959, petition for rehearing en banc was denied, 270 F. 2d 319. A petition for a writ of certiorari was filed January 28, 1960, in the Supreme Court. The petition was denied on October 10, 1960, rehearing denied November 21, 1960.

Thor-Westcliffe Development, Inc., 70 I.D. 134 (1963)

Thor-Westcliffe Development, Inc., v. Stewart L. Udall, Civil Action No. 5343, United States District Court for the District of New Mexico. Dismissed with prejudice June 25, 1963.

See also:

Thor-Westcliffe Development, Inc., v. Stewart L. Udall, et al., Civil Action No. 2105-61. Judgment for defendant, March 22, 1962, Affirmed 314 F. 2d 257, Cert. den. 373 U.S. 951.

Richard K. Todd et al., A-29090 et al. (October 30, 1961)

Bert F. Duesing v. Stewart L. Udall, Civil Action No. 290-62. Judgment for defendant, July 17, 1962 (oral opinion). Appeal taken.

Atwood et al. v. Stewart L. Udall, Civil Actions 293-62 - 299-62, incl. Judgment for defendant, August 2, 1962; Appeal taken.

E. B. Todhunter, A-28197 (May 23, 1960)

Victoria L. Cuccia v. Stewart L. Udall, Civil No. 3921-60. Judgment for defendant, September 17, 1963. No appeal.

Tyee Construction Co., IBCA-112 and 113 (April 30, 1958)

Tyee Construction Co. v. United States, Court of Claims No. 312-60. Judgment for defendant, June 1, 1962. No appeal.

Union Oil Company of California, Ramon P. Colvert, 65 I.D. 215 (1958)

Union Oil Company of California v. Stewart L. Udall, Civil Action No. 3012-58. Judgment for defendant, May 2, 1960 (opinion). Affirmed, 289 F. 2d 790 (1961).

Union Oil Co. of California, et al., 71 I.D. 169 (1964)

Barnette T. Napier, et al. v. Secretary of the Interior, Civil Action No. 8691, in the District Court for the District of Colorado.

Union Oil Company of California, et al., 71 I.D. 169 (1964)

The Oil Shale Corporation, et al. v. Secretary of the Interior, Civil No. 8680, in the United States District Court for the District of Colorado.

Union Oil Company of California, et al., 71 I.D. 169 (1964)

Joseph B. Umpleby et al. v. Stewart L. Udall, Civil Action No. 8685, United States District Court for the District of Colorado.

Union Oil Company of California, 71 I.D. 288 (1964)

Union Oil Company of California v. Stewart L. Udall, Civil Action No. 2595-64. Suit pending.

United States v. Alonso A. Adams et al., 64 I.D. 221 (1957)

Alonso A. Adams et al. v. Paul B. Witmer et al., United States District Court for the Southern District of California, Civil Action No. 1222-57-Y. Complaint dismissed, November 27, 1957 (opinion); reversed and remanded, 271 F. 2d 29 (9th cir. 1958); on rehearing, appeal dismissed as to Witmer; petition for rehearing by Berriman denied, 271 F. 2d 37 (1959).

United States v. Alonso Adams, United States District Court for the Southern District of California, Civil No. 187-60-WM. Judgment for plaintiff, January 29, 1962 (opinion). Judgment modified, 318 F. 2d 861 (1963). No petition.

United States v. Arizona Exploration Co., et al., A-28876 (June 22, 1962)

Blaine J. Lord, et al. v. Roy T. Helmandollar, et al., Civil Action No. 987-63. Judgment for defendants, September 30, 1963. Appeal filed March 4, 1964.

United States v. R. B. Borders, A-28624 (October 23, 1961)

J. R. Osborne v. Harold C. Hammitt, Civil No. 444, in the United States District Court for the District of Nevada. Judgment for defendant, August 19, 1964 (opinion).

United States v. Nick Chournos, A-28577 (July 14, 1961)

Nick Chournos v. United States, Civil Action No. C-164-61, United States District Court for the District of Utah. Complaint dismissed, January 9, 1962. No appeal.

Nick Chournos et al. v. United States et al., Civil Action No. C-238-62, United States District Court for the District of Utah. Dismissed, June 28, 1963. Affirmed, 335 F. 2d 918 (1964). No petition.

United States v. Willard Christensen, A-27549 (May 14, 1958)

La Fortuna Uranium Mines, Inc. v. Fred A. Seaton, Civil Action No. 191-59. Judgment for defendant, April 4, 1960. No appeal.

United States v. J. R. Clements, A-27751 (December 15, 1958)

John Raymond Clements v. Fred A. Seaton, Civil Action No. 560-59. Judgment for defendant, January 13, 1960. No appeal.

ited States v. Alvis F. Denison, et al., 71 I.D. 144 (1964)

Marie W. Denison, individually and as executrix of the Estate of Alvis F. Denison, deceased v. Stewart L. Udall, Civil Action No. 963, in the United States District Court for the District of Arizona. Suit pending.

United States v. J. S. Devenny, A-30289 (August 6, 1964)

J. S. Devenny v. Stewart L. Udall, Civil Action No. 6283, in the United States District Court for the Western District of Washington, Northern Division. Suit pending.

United States v. Francis Dlouhy et al., A-27668 (September 24, 1958)

Francis N. Dlouhy v. Fred A. Seaton, Civil Action No. 1405-59. Judgment for defendant, May 3, 1960. Appeal dismissed, November 28, 1960.

United States v. The Dredge Corporation, A-28022 (December 18, 1959)

The Dredge Corporation v. J. Russell Penny, Civil Action No. 396, in the United States District Court for the District of Nevada. Judgment for defendant, September 25, 1962. Remanded, November 13, 1964.

United States v. Everett Foster et al., 65 I.D. 1 (1958)

Everett Foster et al. v. Fred A. Seaton, Civil Action No. 344-58. Judgment for defendants, December 5, 1958 (opinion); affirmed, 271 F. 2d 836 (1959). No petition.

United States v. Charles H. Henrikson et al., 70 I.D. 212 (1963)

Charles H. Henrikson et al., v. Stewart L. Udall, et al., Civil Action No. 41749, United States District Court for the Northern District of California, Southern Division. Judgment for defendant, May 28, 1964. Appeal taken.

United States v. G. C. (Tom) Mulkern, A-27746 (January 19, 1959)

G. C. (Tom) Mulkern v. James Keough, Civil Action No. 299, in the United States District Court for the District of Nevada. Judgment for defendant, February 19, 1963, (opinion). Affirmed, 326 F. 2d 896 (1964). Rehearing den., April 3, 1964. No petition.

United States v. Richard C. Porter, et al., A-29882 (April 24, 1964)

Hal W. Eldridge, et al. v. Secretary of the Interior, Civil Action No. 64-353, United States District Court for the District of Oregon. Suit pending.

United States v. E. V. Pressentin et al., A-27495 (April 2, 1958)

E. V. Pressentin v. Fred A. Seaton, Civil Action No. 1804, in the United States District Court for the Western District of Washington. Voluntary dismissal by plaintiff entered July 24, 1959.

E. V. Pressentin et al. v. Fred A. Seaton, Civil Action No. 1907-59. Judgment for defendant, January 15, 1960. Reversed and remanded, 284 F. 2d 195 (1960). See A-30004, 71 I.D. 147 (1964).

United States v. C. F. Pruess, Sr., A-28641 (August 22, 1961)

C. F. Pruess, Sr. v. Stewart L. Udall, Civil Action No. 1331-62. Judgment for defendant, May 12, 1964. Appeal taken.

United States v. Edwin R. Saurers, et al., A-30097 (July 9, 1964)

Edwin R. Saurers, et al. v. Stewart L. Udall, Civil Action No. 6245, in the United States District Court for the Western District of Washington, Northern Division. Suit pending.

United States v. Charles L. Seeley, et al., A-28127 (January 28, 1960)

Charles L. Seeley, et al. v. Secretary of the Interior, Civil Action No. 3693-60, in the United States District Court for the District of Columbia, transferred to the United States District Court for the Northern District of California, Civil Action No. 41094. Judgment for defendant, July 29, 1964.

United States v. Thomas R. Shuck, A-27965 (February 2, 1960)

Thomas R. Shuck v. Roy T. Helmandollar, Civil No. 682 Pet., in the United States District Court for the District of Arizona. Judgment for defendant, December 7, 1961. No appeal.

United States v. Charles E. Stewart, A-28966 (September 25, 1962)

Charles E. Stewart v. Gordon Penny et al., Civil Action No. 1619, United States District Court for the District of Nevada. Suit pending.

United Technical Industries, Inc., A-29406 (April 24, 1963)

Jay Nielson v. J. E. Keough et al., Civil Action No. C-158-63, United States District Court for the District of Utah, Central Division. Dismissed July 13, 1964 (opinion). No appeal.

E. A. Vaughey, 63 I. D. 85 (1956)

E. A. Vaughey v. Fred A. Seaton, Civil Action No. 1744-56. Dismissed by stipulation, April 18, 1957. No appeal.

Wasatch Development Co., et al., A-28674 (May 16, 1963)

Joseph B. Umpleby et al. v. Stewart L. Udall, Civil Action No. 8156, United States District Court for the District of Colorado. Suit pending.

Weardco Construction Corp., 64 I.D. 376 (1957)

Weardco Construction Corp. v. United States, Civil Action No. 278-59-PH, in the United States District Court for the Southern District of California. Judgment for plaintiff, October 26, 1959. Satisfaction of judgment entered February 9, 1960.

Lucille S. West, Duncan Miller et al., A-29242 et al. (February 25, 1963, Duncan Miller, A-29231 (February 5, 1963)

Cecil H. Phillips et al. v. Stewart L. Udall, Civil Action No. 847-63. Dismissed on behalf of all except Lucille S. West. Judgment for defendant, February 25, 1964. No appeal.

Buck Willcoxson, A-27402, A-27403 (December 17, 1956)

Buck Willcoxson v. Douglas Henriques, Civil Action No. 3596, in the United States District Court for the District of New Mexico. Motion of plaintiff to dismiss case without prejudice granted, December 10, 1957.

Buck Willcoxson v. Stewart L. Udall, Civil Action No. 2029-58.

United States v. Buck Willcoxson et al., Civil Action No. 1192-59.

Buck Willcoxson v. United States, Civil Action No. 972-59.

Actions consolidated. Judgment for defendant, plaintiff, and defendant, respectively, August 3, 1961. Affirmed 313 F. 2d 684 (1963). Cert. Denied, 373 U.S. 932 (1963)

William A. Smith Contracting Co., Inc., IBCA 83 (July 16, 1959)

William A. Smith Contracting Co., Inc., et al. v. United States, Court of Claims No. 264-57. Judgment for Plaintiff 292 F. 2d 847 (1961). No appeal.

William A. Smith Contracting Co., Inc., v. United States, Court of Claims No. 279-59. Judgment for Defendant 292 F. 2d 854 (1961). No appeal.

W. L. Ridge Construction Co., IBCA-80 (November 30, 1960)

W. L. Ridge v. United States, Court of Claims No. 301-60. Suit Dismissed, October 1, 1963.

Estate of Wook-Kah-Nah, Comanche Allottee No. 1927, 65 I.D. 436 (1958)

Thomas J. Huff, Adm. with will annexed of the Estate of Wook-Kah-Nah, Deceased, Comanche Enrolled Restricted Indian No. 1927 v. Jane Asenap, Wilfred Tabbytite, J. K. Graves, Examiner of Inheritance, Bureau of Indian Affairs, Department of the Interior of the United States of America, and Earl K. Wiseman, District Director of Internal Revenue, Civil Action No. 8281, in the United States District Court for the Western District of Oklahoma. The court dismissed the suit as to the Examiner of Inheritance, and the plaintiff dismissed the suit without prejudice as to the other defendants in the case.

Thomas J. Huff, Adm. with will annexed of the Estate of Wook-Kah-Nah v. Stewart L. Udall, Civil Action No. 2595-60. Judgment for defendant, June 5, 1962. Remanded, 312 F. 2d 358 (1962).

* * * * * *

ACCOUNTS

REFUNDS

If there are applicable funds available, refund may be made of oil and gas lease rentals paid in excess of that required under the lease and applicable statutes and regulations.

Richfield Oil Corporation Shell Oil Company, A-30154, A-30223 (July 30, 1964) 71 I. D. 294

ACCRETION

When a river shifts position gradually so as to submerge land on one shore and later accretions form on the opposite shore covering the spot formerly on the other side of the stream, the river remains the boundary and the owner of the shore to which the accretion attaches gains title to the land formerly belonging to the opposite owner.

Henry E. Schemmel, Harold Eugene Feese, A-29906 (Feb. 20, 1964)

ADDITIONAL HOMESTEADS

An application for additional homestead entry on public land that is withdrawn from settlement or entry is properly rejected.

An applicant for homestead entry who requests a survey of the land on which he has staked his claim and made his settlement and who subsequently files an application to enter and submits final proof on the surveyed land, which comprises only a portion of the staked claim, and receives a patent therto, must be deemed to have waived or abandoned any rights to the remainder of the claim and both his notice of location of settlement filed four years later and his application for additional homestead entry filed 12 years later covering the remainder of the claim are properly rejected.

Lafe L. Hufman, A-29985 (Mar. 6, 1964)

ADDITIONAL HOMESTEADS--Continued

Where a homestead entry is canceled as a consequence of a private contest and the contestant is notified of his preference right to make an entry, but cancellation of the entry is noted only in the serial register and not on the official status plat and in the historical index, an application to enter the land, whether filed by the contestant or another, is premature and must be rejected; however, the contestant is entitled to notice after the cancellation is properly noted and an opportunity to file an application for entry within 30 days thereafter.

Carl R. Hawkins, A-29773 (Mar. 24, 1964)

ADMINISTRATIVE PRACTICE

Where a regulation provides that the rates charged for a right-of-way across public lands may be revised only after notice and an opportunity for hearing, it is improper to increase the rates without following the prescribed procedure.

Texas Gas Transmission Corporation, A-29856 (Jan. 14, 1964)

The proceedings leading to the cancellation of a mining claim will not be reopened many years after the decision has become final in the absence of a compelling legal or equitable basis warranting reconsideration and an application for patent on a mining claim is properly rejected where, more than sixteen years before the patent application was filed, the claim had been declared null and void and thereafter canceled.

A hearing is not required by departmental practice or by the requirements of due process on the rejection of an application for a patent on mining claims which, over 25 years before the patent application was filed, were declared null and void in adverse proceedings or by a default decision after notice of charges against the claims and an opportunity for a hearing thereon were given the record title owner of the claims.

Administrative practice, no matter how long standing, is not controlling when it is clearly erroneous.

Union Oil Company of California et al., A-29560 (Apr. 17, 1964) 71 I. D. 169

The fact that a mining claim may at one time have been found to be a valid claim does not estop the Department, under the principle of res judicata, from bringing adverse proceedings against the claim when an application for patent to the claim is filed.

United States v. LaFortuna Uranium Mines, Inc., A-29852 (May 4, 1964)

Mineral examiners, employed by the Bureau of Land Management to examine mining claims prior to determining whether or not adverse proceedings should be initiated against the claims, are not clients of the attorneys who may subsequently represent the Government in such proceedings and are not governed by the rules normally applied to attorney-client relationships.

United States v. Julius S. Foster and Minerals Engineering Company, A-29994 (June 24, 1964)

The Director of the Bureau of Land Management has authority at any time to take up and dispose of any matter pending in a land office or to review any decision of a subordinate officer with or without an appeal.

State of Utah, A-29461 et al. (Oct. 30, 1964) 71 I.D. 392

When an assignment of an oil and gas lease has been approved by the Department and thereafter it appears that there is a controversy as to the validity of the assignment, the Department will not rescind approval of the assignment, even though there were some irregularities apparent on the assignment, but will maintain the status quo for a period sufficient to permit the parties to institute litigation or take other action to resolve their dispute.

McCulloch Oil Corporation of California, A-30208 (Nov. 25, 1964)

An amendment of a departmental regulation to provide expressly for the first time that the showing required for making a second homestead entry must be made in cases where a homestead application has been filed but withdrawn prior to allowance will not be applied where the first application was filed and withdrawn prior to the effective date of the amendment, particularly

where the practice of the land office has been not to require the showing.

Raymond L. Gunderson, A-30134 (Dec. 2, 1964) 71 I.D. 477

The letter from Secretary of the Interior Ray Lyman Wilbur to the Imperial Irrigation District, February 24, 1933, which informally ruled that the excess land laws did not apply to lands in the Imperial Irrigation District, was based upon clearly erroneous conclusions of law.

Administrative practice, no matter of how long standing, is not controlling where it is clearly erroneous.

Under departmental regulations (May 31, 1910, 38 L.D. 646, para. 78; currently, 43 CFR 230.110), a desert land entryman who owns a water right can rely on his own efforts to convey his water to his entry without assistance from a government project, thereby avoiding the requirements of the reclamation law, or he can participate in the project. In the latter case he must observe requirements of the reclamation law, including land limitations.

Applicability of the Excess Land Laws Imperial Irrigation District Lands, M-36675 (Dec. 31, 1964) 71 I.D. 496

ADMINISTRATIVE PROCEDURE ACT

ADJUDICATION

Where a hearing has been held in a contest, the record made at the hearing shall be the sole basis for a decision and evidence submitted at a later date cannot be considered in deciding the case on the merits.

United States v. Gilbert C. Wedertz, A-30126 (Oct. 15, 1964) 71 I.D. 368

ADMINISTRATIVE PROCEDURE ACT--Continued

ADJUDICATION--Continued

Although the United States may initiate a contest against a mining claim, the mining claimant, who is the contestee, has the burden of showing affirmatively that he has effected compliance with the mining law which entitles him to continued possession of the claim, within the meaning of the Administrative Procedure Act which declares that the proponent of a rule or order shall have the burden of proof.

United States v. Anita E. Spurrier et al., A-29306 (Oct. 21, 1964)

HEARINGS

A request for a hearing under the Administrative Procedure Act to submit proof as to the identity of a soldier and original entryman to sustain a soldier's additional homestead application is properly denied when the appellant has been given the opportunity to submit written evidence and has failed to do so, and it does not appear that the hearing would establish any further facts.

Charles M. Dollarhide, A-29933 (Mar. 5, 1964)

Technical rules of evidence are not applicable to administrative proceedings, and hearsay evidence may be admitted in an administrative proceeding.

United States v. Richard C. Porter et al., A-29882 (Apr. 24, 1964)

In a contest against a mining claim, the claimant has the burden of proof under the Administrative Procedure Act to establish the validity of his claim.

United States v. Melvin L. Nevitt, A-30030 (July 28, 1964)

Admission of hearsay evidence in a hearing held to determine the validity of a mining claim is not cause for reversal if the decision is supported by substantial evidence, including probative hearsay.

United States v. C. M. Keyes et al., A-30098 (Aug. 18, 1964)

ADMINISTRATIVE PROCEDURE ACT--Continued

HEARINGS--Continued

Where a hearing has been held in a contest, the record made at the hearing shall be the sole basis for a decision and evidence submitted at a later date cannot be considered in deciding the case on the merits.

United States v. Gilbert C. Wedertz, A-30126 (Oct. 15, 1964) 71 I.D. 368

A mining claimant who participates in a hearing which is a part of contest proceedings that challenge the validity of his claim and in an appeal from a decision of the hearing examiner on the validity of the claim without registering an objection that the standards of fairness and impartiality prescribed by the Administrative Procedure Act have not been observed in the conduct of the hearing is barred from raising that objection in a subsequent appeal to the Secretary of the Interior.

The procedure prescribed by the Interior Department's rules of practice for the initiation, prosecution, and decision of contests against mining claims does not violate the requirements of the Administrative Procedure Act for separation of functions and does not constitute a denial of due process.

United States v. Anita E. Spurrier et al., A-29306 (Oct. 21, 1964)

PUBLIC INFORMATION

Where the Secretary has provided by regulation that a file containing copies of all final opinions and orders issued by the Secretary or the Solicitor in the adjudication of cases be maintained in the Office of the Solicitor and that that file shall be available for public inspection, and where such a file is being maintained, he has complied with the provision of the Administrative Procedure Act, which requires all agencies to publish or make available for public inspection all final opinions or orders in the adjudication of cases.

Robert K. Foster et al., A-29857 (June 15, 1964)

AGENCY

A person who selects the land to be applied for, fills in the land description on the offer, and is to receive a commission if the price he obtains for finding an assignee for the lease is satisfactory to the lease offeror is an agent of the offeror, and the offer to earn priority must be accompanied by the statement required by the regulation then in effect, 43 CFR 192.42(e)(4)(i), notwithstanding that the agency may not be the lease.

B. F. Sandoval, Jr., Leah P. Golden, A-29975 (June 12, 1964)

AIRPORTS

When, after partial rejection of an application for renewal of an airport lease on public land, the Federal Aviation Agency indicates its willingness to allow a more extended coverage than indicated in the recommendation upon which the partial rejection was based, the case will be remanded for a determination of the land to be covered by the renewal in a meeting of representatives of the Bureau of Land Management, the applicant and the Federal Aviation Agency.

Board of County Commissioners, White Pine County, Nevada, A-29738 (Jan. 14, 1964)

ALASKA

HOMESTEADS

An application for additional homestead entry on public land that is withdrawn from settlement or entry is properly rejected.

An applicant for homestead entry who requests a survey of the land on which he has staked his claim and made his settlement and who subsequently files an application to enter and submits final proof on the surveyed land, which comprises only a portion of the staked claim, and receives

ALASKA--Continued

HOMESTEADS--Continued

a patent thereto, must be deemed to have waived or abandoned any rights to the remainder of the claim and both his notice of location of settlement filed four years later and his application for additional homestead entry filed 12 years later covering the remainder of the claim are properly rejected.

Lafe L. Hufman, A-29985 (Mar. 6, 1964)

The Department is not justified in reducing the cultivation requirements under the homestead law in Alaska where the occurrence relied upon to justify a reduction, wetness of the area, is not an unforeseeable event as it is shown to have occurred in years prior to a year in which cultivation was required and the same condition did not prevent cultivation in the next succeeding year.

Clarence A. Beichner, A-30051 (Apr. 10, 1964)

The statutory life of a settlement claim in Alaska begins from the date of settlement.

Commuted homestead final proof under a settlement claim in Alaska submitted during the third entry year by a homesteader, who is not entitled to credit for military service, is not acceptable where it does not show that 1/8 of the area of the claim had been cultivated.

Thomas Foster, A-30083 (June 15, 1964)

It is improper to reject final proof and to cancel a homestead entry without a hearing on the ground that the final proof shows that grain was planted in the coldest months of the winter in Alaska and therefore the attempted cultivation was not performed in good faith where the entryman presents evidence on appeal that his method of winter cultivation is an acceptable practice and he actually cleared the land with a bulldozer equipped with teeth which actually broke the soil to a depth of 12 inches immediately before the sowing of the seed; in such circumstances adverse proceedings against the entry must be initiated by a contest with an opportunity for a hearing.

John A. Bartel, A-29664 (Oct. 11, 1962), distinguished.

George J. Sehm, A-30129 (Nov. 9, 1964)

ALASKA--Continued

HOMESTEADS--Continued

The filing of an allowable homestead application in Alaska constitutes an entry within the meaning of the act of September 5, 1914, so that an individual who has filed an allowable homestead application in Alaska but withdrawn it prior to allowance by the land office has exercised his right of entry under the homestead law and is properly required to make the necessary showing for a second homestead entry under the 1914 act in connection with any subsequent homestead application.

An amendment of a departmental regulation to provide expressly for the first time that the showing required for making a second homestead entry must be made in cases where a homestead application has been filed but withdrawn prior to allowance will not be applied where the first application was filed and withdrawn prior to the effective date of the amendment, particularly where the practice of the land office has been not to require the showing.

Raymond L. Gunderson, A-30134 (Dec. 2, 1964)
71 I. D. 477

A person who files an allowable application for homestead entry in Alaska and who withdraws the application before the land office has taken any action to allow it must comply with the act of September 5, 1914, if he thereafter files an application to make another homestead entry; however, he need do so only when his first application was filed after the effective date of the amendment to the departmental regulation expressly stating this rule.

Where the fees paid with the filing of an application for homestead entry remain in the land office after the withdrawal of the application and the applicant files a second application and is informed that the fees already paid will be transferred to the second application but the administrative action to accomplish this is not taken until after an intervening application has been filed, the second homestead application will be deemed to have been validly filed from the time of its filing.

Joseph Q. Clark, A-30215 (Dec. 22, 1964)

ALASKA--Continued

INDIAN AND NATIVE AFFAIRS

Cases appealed to the Secretary of the Interior from the partial rejection of applications for allotments to native Alaskans under the act of May 17, 1906, as amended, will be remanded to the Bureau of Land Management for further proceedings consistent with the new departmental policy approved by the Secretary on Oct. 25, 1963, with respect to the interpretation of the statutory requirement for substantially continuous use and occupancy by the applicant of the land sought as an allotment.

Carl A. Charles et al., A-29766, A-29841, A-29959, A-30040 (Jan. 10, 1964)

Solicitor's opinion, M-36352, June 27, 1956, holding that the allotment right of an Alaskan native under the Alaska Allotment Act, 34 Stat. 197, prior to the 1956 amendment, was limited to a single entry and that the allotment could not embrace a grant of incontiguous tracts of land is correct, where the proposed allotment is of tracts which are not related in any sense, or where, his allotment having once been determined, an additional grant to the same applicant is being considered.

Congress has frequently used the word "homestead" in connection with the allotment of land to Indians to indicate merely that the land allotted was to be subject to special status and the use of the word "homestead" in the Alaska Allotment Act, 34 Stat. 197, as amended, 70 Stat. 954, is not necessarily indicative of an intention to superimpose the requirements of the general homestead laws on the express requirements of the Alaska statute.

While both the Indian Allotment Act of 1887, 24 Stat. 388, and the Alaska Allotment Act, 34 Stat. 197, as amended, 70 Stat. 954, are representative of the method which was used to grant land to "uncivilized" persons in the late nineteenth and early twentieth centuries, the specific requirements of the numerous allotment statutes enacted during that time vary according to the particular situations which they were intended to meet and the two acts should not be read in pari materia to impose identical requirements on applicants under each statute.

The historical and legislative materials out of which the Alaska Allotment Act, 34 Stat. 197, as amended, 70 Stat. 954, emerged impel the conclusion that the Secretary is authorized to make single allotments of incontiguous tracts of land which, taken as a whole, compose the single unit which is the actual home of the applicant.

ALASKA--Continued

INDIAN AND NATIVE AFFAIRS--Continued

The effect of the enactment of Departmental regulations in the 1956 amendment to the Alaska Allotment Act, 70 Stat. 954, was to make mandatory under the statute the determination of use and occupancy which, prior to the 1956 amendment, had been discretionary except where the claim of a preference right was involved, but the amendment did not bind the Department to the exclusive consideration of the specific elements of proof which, though listed in the regulations, were not made a part of the amendment.

Both Frank St. Clair, 52 L.D. 597, (1929), and Frank St. Clair (On Petition), 53 I.D. 194, 1930, affirm the rule that occupancy of the land sufficient to establish a preference right under the Alaska Allotment Act, 34 Stat. 197, prior to amendment in 1956 did not need to be continuous and that residence on the land was not required to the exclusion of a home elsewhere.

The reference to residence and cultivation in Herbert Hilscher, 67 I.D. 410, (1960), if that reference was intended to imply that other instances of occupancy expended by the native according to his natural culture and environment would be inadequate to show substantial actual possession and use of the land, must be restricted to the interpretation of existing regulations and, in view of the history of the Alaska Allotment Act, 34 Stat. 197, as amended, 70 Stat. 954, there is no justification for treating the reference to residence and cultivation as disclosing a limitation on the authority of the Secretary which would prevent him from promulgating regulations that evidence a broader policy.

The Secretary of the Interior is authorized by the Alaska Allotment Act, 34 Stat. 197, as amended 70 Stat. 954, to promulgate regulations which provide for a determination of "use and occupancy" of the land according to the native's mode of life and the climate and character of the land; taking these factors into consideration, such use and occupancy requires a showing of substantial actual possession and use of the land, at least potentially exclusive of others which is substantially continuous for the period required.

The Alaska Allotment Act, 34 Stat. 197, as amended, 70 Stat. 954, authorizes the Secretary of the Interior, "in his discretion" to promulgate a rule that allotments will not be made in units smaller than forty acres in size and conformed to the regular rectangular survey pattern and to prescribe by regulation in advance that a determination of the applicant's use and occupancy of a significant portion of any conforming forty acre tract shall normally entitle the applicant to an allotment of the full tract where no conflicting claim is involved.

Allotment of Land to Alaska Natives, M-36662
(Sept. 21, 1964) 71 I.D. 340

ALASKA--Continued

LAND GRANTS AND SELECTIONS

Where an oil and gas lease offer was filed prior to enactment of the Alaska Statehood Act on July 7, 1958, a selection for the land was filed thereafter by the Territory of Alaska pursuant to the grant for the University of Alaska, and a lease was subsequently issued in response to the offer and prior to the admission of the State of Alaska on Jan. 3, 1959, it is error to cancel the lease because of the filing of the selection and it is immaterial that subsequent to the admission of the State the land was patented to the State pursuant to the selection.

Standard Oil Company of California, A-29263
(Jan. 27, 1964) 71 I.D. 1

It is proper to reject an oil and gas lease offer for Alaskan land to the extent of conflict with an Alaskan selection application after the application has been tentatively approved even though the offer was filed before the selection application.

Union Oil Company of California et al., A-29907
(Feb. 20, 1964)

Where an appeal is taken from a refusal to accept for recordation a notice of location of settlement or occupancy of a trade and manufacturing site for the reason that a State selection has precedence, and the State later states that the selection was not intended to apply to land in the status of that included in the notice of location, the appeal becomes moot and the case will be remanded for further consideration of the notice of location.

Dean Burtis Bunker, A-30009 (Mar. 26, 1964)

Where land in Alaska is restored from a withdrawal and the State of Alaska does not exercise its statutory preference right to apply for the land within the 90-day period thereafter but does apply to select the land at a later time after an intervening offer for an oil and gas lease is filed, it is proper to give the State selection priority of consideration and to suspend action on the offer pending approval of the selection.

Union Oil Company of California, A-29905
(Mar. 30, 1964)

ALASKA--Continued

OIL AND GAS LEASES

The annual rental due for the sixth and succeeding years on noncompetitive oil and gas leases in Alaska issued prior to July 3, 1958, and extended thereafter is at the rate of 50 cents per acre per annum.

Colorado Oil and Gas Corporation, A-30003 (July 27, 1964) 71 I. D. 284

Section 10 of the act of July 3, 1958, amending the Alaska Oil Proviso of the Mineral Leasing Act of 1920 to require rentals for noncompetitive oil and gas leases in Alaska to be the same as similar leases for lands elsewhere in the United States, is not applicable to leases which had been granted 5-year extensions prior to the act as to the remainder of their extended term, including a 2-year extension resulting from segregation of the lease by partial assignment under section 30(a) of the Mineral Leasing Act, as amended.

Richfield Oil Corporation Shell Oil Company, A-30154, A-30223 (July 30, 1964) 71 I, D.294

The holders of noncompetitive oil and gas leases on public land in Alaska issued before July 3, 1958, and extended thereafter are properly required to pay annual rental of 50 cents per acre for the sixth and successive years of the extended lease term.

Kenneth J. Kadow et al., A-30053 (Oct. 5, 1964)

TRADE AND MANUFACTURING SITES

Where an appeal is taken from a refusal to accept for recordation a notice of location of settlement or occupancy of a trade and manufacturing site for the reason that a State selection has precedence, and the State later states that the selection was not intended to apply to land in the status of that included in the notice of location, the appeal becomes moot and the case will be remanded for further consideration of the notice of location.

Dean Burtis Bunker, A-30009 (Mar. 26, 1964)

ALASKA--Continued

UNIVERSITY OF ALASKA GRANT

Where an oil and gas lease offer was filed prior to enactment of the Alaska Statehood Act on July 7, 1958, a selection for the land was filed thereafter by the Territory of Alaska pursuant to the grant for the University of Alaska, and a lease was subsequently issued in response to the offer and prior to the admission of the State of Alaska on Jan. 3, 1959, it is error to cancel the lease because of the filing of the selection and it is immaterial that subsequent to the admission of the State the land was patented to the State pursuant to the selection.

Standard Oil Company of California, A-29263 (Jan. 27, 1964) 71 I, D. 1

APPLICATIONS AND ENTRIES

GENERALLY

An application for a private exchange under the Taylor Grazing Act, which is to be rejected, will not be transferred to the Department of Agriculture for consideration as an application for a forest exchange under the act of Mar. 20, 1922, as amended, where the selected lands are not within the boundaries of a national forest since the 1922 act does not apply to such exchanges.

Chris H. Gansberg, Executor of the Fred Gansberg Estate, A-29830 (Jan. 30, 1964)

A quitclaim deed evidencing the assignment of a desert land entry which was acknowledged outside the State in which the land in the entry is located is properly rejected.

Fred E. Trowbridge, A-29814 (Feb. 11, 1964)

Any name used by an individual, whether real or fictitious, by which she may be known or by which she may transact business or execute contracts, may constitute her signature if affixed by that individual without fraudulent intent and if there is no doubt as to the identity of the individual, and an oil and gas lease offer in which the signed name of the offeror differs from the typed name of the offeror in the first

APPLICATIONS AND ENTRIES--Continued

GENERALLY--Continued

block of the lease form is acceptable if, in fact, the signature is that of the offeror and the offer is, in all other respects, acceptable.

Mary Adele Monson, A-29952 (July 14, 1964)
71 I.D. 269

An application for a desert land entry which has been in a suspended status since 1920 and which should have been rejected pursuant to a directive issued in 1920 because the applicant was unable to show an adequate source of irrigation water is properly rejected where there is no showing that a feasible source of water is available now.

Heirs of Charles E. Payne, A-30100 (Sept. 24, 1964)

AMENDMENTS

A desert land entryman will not be allowed an amendment to enlarge the area of his patented entry under regulation 43 CFR 104.10 when the new area is desired for purposes of construction of a dwelling and other buildings and not that of reclamation.

Leonard G. Olson, A-29962 (Mar. 3, 1964)

Applications filed under the Small Tract Act for certain pieces of land will not be amended by the Department to substitute any of a number of suggested alternative land descriptions.

Jack M. Gardner, Melvin Church, A-30029 (Mar. 25, 1964)

Where a desert land entryman discovers that the description of the land in his original entry, upon which he has placed certain improvements, has been changed by a resurvey of the land in the area, an application to amend his original entry to include the land upon which the improvements have been placed will be approved, there appearing no objection of record.

Heirs of Frank Hoogner, Los Angeles 038258 (Oct. 16, 1964)

APPLICATIONS AND ENTRIES--Continued

FILING

A potassium prospecting permit issued for a period of two years expires, in the absence of statutory provision for extension, at the close of the second anniversary of the date on which it was issued, and applications for permits on the land in the permit, filed on the last day of the permit, must be rejected.

Richard Minasian et al., A-29770, A-29870 (Jan. 14, 1964)

Where a homestead entry is canceled as a consequence of a private contest and the contestant is notified of his preference right to make an entry, but cancellation of the entry is noted only in the serial register and not on the official status plat and in the historical index, an application to enter the land, whether filed by the contestant or another, is premature and must be rejected; however, the contestant is entitled to notice after cancellation is properly noted and an opportunity to file an application for entry within 30 days thereafter.

Carl R. Hawkins, A-29773 (Mar. 24, 1964)

An oil and gas lease offer is properly rejected when it is filed subsequent to the issuance of a public land order revoking a prior order withdrawing the land applied for where the restoration order provides that the land involved shall not be open to applications and offers under the mineral leasing laws until a certain date, which is subsequent to the date of the filing of appellant's offer.

W. W. Priest, A-30232 (July 13, 1964)

Where an application for a 5-year extension of a noncompetitive oil and gas lease is stamped as filed on the day after the expiration date of the lease and the applicant claims but offers no convincing proof that the application was actually received the previous day, the application is properly rejected.

Kenneth J. Kadowet al., A-30053 (Oct. 5, 1964)

APPLICATIONS AND ENTRIES--Continued

FILING--Continued

Where the fees paid with the filing of an application for homestead entry remain in the land office after the withdrawal of the application and the applicant files a second application and is informed that the fees already paid will be transferred to the second application but the administrative action to accomplish this is not taken until after an intervening application has been filed, the second homestead application will be deemed to have been validly filed from the time of its filing.

Joseph Q. Clark, A-30215 (Dec. 22, 1964)

An oil and gas lease offer is properly rejected where it describes land by a meridian and in a county of one State, but designates the land as being in a second State and is filed in the land office of the second State.

Zula Mae Dennis, A-30298 (Dec. 24, 1964)

PRIORITY

An oil and gas lease offer submitted over the counter after the offeror has attended to other business in the land office is given priority on the basis of the actual filing time even though the offeror was tendering his offer to the clerk when a conflicting offer was received from another offeror directly ahead of him in the line at the counter and such conflicting offer was stamped as received only one minute earlier.

Hoover H. Wright, A-30127 (Apr. 6, 1964)

The filing of concurrent homestead applications by an individual bars the allowance of either so long as both applications remain of record and, while the withdrawal of one will permit the allowance of the other, such allowance will be subject to otherwise intervening rights that have been asserted prior to the withdrawal of the first application.

Raymond L. Gunderson, A-30134 (Dec. 2, 1964)
71 I. D. 477

BONNEVILLE POWER ADMINISTRATION

Electric transmission line easement which gives the grantee the right to maintain and keep parcel of land "at all times free and clear of trees and brush" includes right to spray small natural growth conifers which have not reached such height as to threaten physical or electrical contact with the conductor or which have not reached such density as to block maintenance access along the right-of-way.

The owner of an electric transmission line easement may fully use the rights granted by the easement, including rights necessarily implied or incidental thereto.

The owner of electric transmission line easement is not limited in maintenance of the easement to those methods known or generally practiced at the time of acquisition but may use methods of maintenance reasonably necessary under existing conditions.

Claim of Port Blakely Mill Company, T-P-320
May 1, 1964) 71 I. D. 217

The provisions of the Bonneville Project Act which authorize settlement of claims against the Bonneville Power Administration are applicable to claims for breach of contract involved in appeals taken to the Board of Contract Appeals from decisions of contracting officers of the Bonneville Power Administration.

Montgomery-Macri Company and Western Line Construction Company, Inc., IBCA-59 and IBCA-72
(June 30, 1964) 71 I. D. 253

The Bonneville Power Administrator, acting as such and for and on behalf of the United States Entity designated pursuant to the Canadian Treaty, is authorized to execute appropriate exchange agreements to effect the unconditional assurance of the delivery of power agreed to be equivalent to Canada's entitlement to downstream power benefits in order to implement the exchange of ratifications of the Canadian Treaty and thereby acquire for the benefit of the United States the advantages flowing therefrom.

Canadian Entitlement Exchange Agreements,
M-36669 (July 20, 1964) 71 I. D. 315

BUREAU OF LAND MANAGEMENT

The Director of the Bureau of Land Management is not limited in his consideration of an appeal from a land office decision to the particular question raised by that appeal; he thus obtains jurisdiction over all of the issues which pertain to the transaction to which the appeal relates and may determine them.

R. D. Compton, Edna A. Compton, A-30206 (July 2, 1964)

The Director of the Bureau of Land Management has authority at any time to take up and dispose of any matter pending in a land office or to review any decision of a subordinate officer with or without an appeal.

State of Utah, A-29461 et al. (Oct. 30, 1964) 71 I.D. 392

BUREAU OF RECLAMATION

GENERALLY

Nothing in the Reclamation Act of 1902 (32 Stat. 388) or its legislative history suggests that private landowners with water rights could participate in a project, pay their share of its cost, but be exempt from acreage limitation.

Applicability of the Excess Land Laws Imperial Irrigation District Lands, M-36675 (Dec. 31, 1964) 71 I.D. 496

CONSTRUCTION

Where a federal statute provides that the reclamation laws shall govern the construction, operation, and management of project works, the excess land provisions of the reclamation laws are thereby carried into effect unless the terms of the statute provide otherwise.

Applicability of the Excess Land Laws Imperial Irrigation District Lands, M-36675 (Dec. 31, 1964) 71 I.D. 496

BUREAU OF RECLAMATION--Continued

EXCESS LANDS

Sections 1 and 4(b) of the Boulder Canyon Project Act (45 Stat. 1057, 1059; 43 U.S.C. secs. 617, 617(c)), which require the costs of the main canal and appurtenant structures to connect with the Imperial Valley to be repaid pursuant to reclamation law, carry into effect the excess land provisions of Section 46 of the Omnibus Adjustment Act of May 25, 1926 (44 Stat. 649; 43 U.S.C. sec. 423e).

The provision in Section 5 of the Reclamation Act of June 17, 1902 (32 Stat. 388, 389; 43 U.S.C. sec. 431) that "no right to the use of water for land in private ownership shall be sold" for more than 160 acres means that the use of project facilities shall not be made available to a single owner for service to more than 160 acres. Sections 4 and 5 of the 1902 Act, read together, indicate that the "sale" referred to is not merely a commercial transaction, but is the contract by which the government secures repayment and the water user obtains the range of benefits resulting from the construction of the federal project.

Nothing in the Reclamation Act of 1902 (32 Stat. 388) or its legislative history suggests that private landowners with water rights could participate in a project, pay their share of its cost, but be exempt from acreage limitation.

Neither the existence nor nonexistence of a vested water right is itself determinative of whether the excess land laws are applicable in any given case.

Under departmental regulations (May 31, 1910, 38 L.D. 646, para. 78; currently, 43 CFR 230.110), a desert land entryman who owns a water right can rely on his own effort to convey his water to his entry without assistance from a government project, thereby avoiding the requirements of the reclamation law, or he can participate in the project. In the latter case he must observe requirements of the reclamation law, including land limitations.

Where the claimants of existing water rights covering lands in the Imperial Irrigation District have sought and obtained the construction of a federal reclamation project to eliminate the hazards of drought, flood and silt and to obtain a canal entirely within the United States, they must accept the conditions imposed by the reclamation law, including land limitations.

Where Congress has deemed it proper to waive or modify the excess land laws in certain projects, it has always found it appropriate to enact positive legislation setting forth the exemption or other modification in unmistakable terms.

Privately owned lands in the Imperial Irrigation District, even those assumed to have vested Colorado River water rights, are subject to excess land laws.

Applicability of the Excess Land Laws Imperial Irrigation District Lands, M-36675 (Dec. 31, 1964) 71 I.D. 496

BUREAU OF RECLAMATION--Continued

WATER RIGHT APPLICATIONS

The provision in Section 5 of the Reclamation Act of June 17, 1902 (32 Stat. 388, 389; 43 U.S.C. sec. 431) that "no right to the use of water for land in private ownership shall be sold" for more than 160 acres means that the use of project facilities shall not be made available to a single owner for service to more than 160 acres. Sections 4 and 5 of the 1902 Act, read together, indicate that the "sale" referred to is not merely a commercial transaction, but is the contract by which the government secures repayment and the water user obtains the range of benefits resulting from the construction of the federal project.

Applicability of the Excess Land Laws Imperial Irrigation District Lands, M-36675 (Dec. 31, 1964) 71 I.D. 496

COAL LEASES AND PERMITS

LEASES

A bidder for a coal lease may not modify his bonus bid by decreasing the amount to be paid immediately and extending the time for payment of the balance after the bids have been opened, even though his bid was the only one submitted in response to the published invitation for bids, and he is properly required to pay the full amount of his bid as a condition precedent to issuance of the lease.

Malcolm N. McKinnon, A-29979, A-29996, June 12, 1964

PERMITS

An application for a coal prospecting permit is properly rejected when information is available as to the existence and workability of coal deposits in the land; it is not necessary that detailed information be available which permits a determination to be made with some degree of assurance that a mining operation will be an economic success.

Colorado-Ute Electric Association, Inc., A-29964 (Feb. 20, 1964)

COAL LEASES AND PERMITS--Continued

PERMITS--Continued

The filing of an application for a coal prospecting permit does not vest in the applicant any rights which preclude the Department from considering the application under regulations adopted after such filing.

An applicant for a coal prospecting permit is properly required to comply with a requirement for paying rental before a permit will be issued, although the requirement was not in effect at the time he filed his application.

Virgil V. Peterson et al., A-30155, A-30159 (Sept. 24, 1964)

RENTALS

An applicant for a coal prospecting permit is properly required to comply with a requirement for paying rental before a permit will be issued, although the requirement was not in effect at the time he filed his application.

Virgil V. Peterson et al., A-30155, A-30159 (Sept. 24, 1964)

COLOR OR CLAIM OF TITLE

GENERALLY

A color of title application is properly rejected when a sale for taxes to a governmental agency has interrupted the statutory period of a 20-year holding in good faith adverse possession under claim or color of title within the meaning of the Color of Title Act and an action to obtain possession by the United States, the true owner, has been instituted prior to the end of 20 years from the date of the tax sale.

Russell A. Beaver, J. F. Beaver, A-29847 (Mar. 23, 1964) 71 I.D.114

COLOR OR CLAIM OF TITLE--Continued

GENERALLY--Continued

An application to purchase public land under the Color of Title Act is properly rejected where the evidence shows that the color of title claim was not initiated until after the land claimed had been withdrawn.

Claude M. Williams, Jr., et al., A-29928
(Mar. 26, 1964)

Where the public interest, requiring that the land applied for as a class 2 claim be retained in public ownership for public recreational purposes, far outweighs any equities that the applicants may have in the land, it is within the discretionary authority of the Secretary, and proper in such circumstances, to reject the claim or color of title application.

Martin L. and Ellen A. Fadden, Sacramento
065014 (July 24, 1964)

A class two color of title application is properly rejected when a sale for taxes to a governmental agency has interrupted the period of good faith adverse possession under claim or color of title at some time subsequent to Jan. 1, 1901.

W. D. Reams, A-30113 (Sept. 23, 1964)

APPLICATIONS

A color of title application is properly rejected when a sale for taxes to a governmental agency has interrupted the statutory period of a 20-year holding in good faith adverse possession under claim or color of title within the meaning of the Color of Title Act and an action to obtain possession by the United States, the true owner, has been instituted prior to the end of 20 years from the date of the tax sale.

Russell A. Beaver, J. F. Beaver, A-29847
(Mar. 23, 1964) 71 I.D.114

An application to purchase public land under the Color of Title Act is properly rejected where the applicant shows that he has held the land for less than 20 years under a conveyance from grantors who occupied the land for a period which, if added to his alleged possession, would total

COLOR OR CLAIM OF TITLE--Continued

APPLICATIONS--Continued

more than 20 years, but fails to show that the grantors had any reason to believe that they had title to the land other than merely by their alleged adverse possession, since mere possession of public land alone cannot be considered as constituting a holding of land under a claim or color of title in good faith as contemplated and required by the Color of Title Act.

Thomas Ormachea, A-30092 (May 8, 1964)

An application to purchase land under the Color of Title Act is properly rejected when it is based on the assumption that the land to be purchased was included in a patent issued to the applicant by the State of Utah purporting to describe land in Utah whereas the land actually was in Colorado and was never a part of the land appellant acquired under the patent.

John H. Ismay, A-29930 (June 30, 1964)

A class two color of title application is properly rejected when a sale for taxes to a governmental agency has interrupted the period of good faith adverse possession under claim or color of title at some time subsequent to Jan. 1, 1901.

W. D. Reams, A-30113 (Sept. 23, 1964)

A color of title application is properly rejected where the deeds under which the tract applied for has been claimed have a description from which it is impossible to define and limit the tract applied for with any certainty, and also where it appears that the appellant cannot establish a holding of the tract in good faith for 20 years since she held it for less than that period and her immediate predecessor-in-interest was aware of the superior title in the United States when he conveyed to her since he had previously filed a color of title application for the tract which had been rejected, and, therefore, his holding could not be tacked on to hers to establish the requisite period.

Nora Beatrice Kelley Howerton, A-30109
(Nov. 17, 1964) 71 I.D. 429

COLOR OR CLAIM OF TITLE--Continued

APPRAISED VALUE

In the absence of an application to purchase public land under the Color of Title Act, this Department has no authority to appraise land for disposition under that act.

Estate of Herman C. Erling et al., A-29941 (Aug. 5, 1964)

GOOD FAITH

An application to purchase public land under the Color of Title Act is properly rejected where the applicant shows that he has held the land for less than 20 years under a conveyance from grantors who occupied the land for a period which, if added to his alleged possession, would total more than 20 years, but fails to show that the grantors had any reason to believe that they had title to the land other than merely by their alleged adverse possession, since mere possession of public land alone cannot be considered as constituting a holding of land under a claim or color of title in good faith as contemplated and required by the Color of Title Act.

Thomas Ormachea, A-30092 (May 8, 1964)

A color of title application is properly rejected where the deeds under which the tract applied for has been claimed have a description from which it is impossible to define and limit the tract applied for with any certainty, and also where it appears that the appellant cannot establish a holding of the tract in good faith for 20 years since she held it for less than that period and her immediate predecessor-in-interest was aware of the superior title in the United States when he conveyed to her since he had previously filed a color of title application for the tract which had been rejected, and, therefore, his holding could not be tacked on to hers to establish the requisite period.

Nora Beatrice Kelley Howerton, A-30109 (Nov. 17, 1964) 71 I. D. 429

CONSTITUTIONAL LAW

Under the Constitution the United States may acquire land for many purposes, including wildlife refuges; may make all needful rules and regulations respecting this land; and may delegate such powers to the Secretary of the Interior. These rules and regulations are superior to those of the State where there is a conflict.

Authority of the Secretary of the Interior to Manage and Control Resident Species of Wildlife Which Inhabit Wildlife Refuges, Game Ranges, Wildlife Ranges, and Other Federally Owned Property Under the Administration of the Secretary, M-36672 (Dec. 1, 1964) 71 I. D. 469

CONTESTS AND PROTESTS

Where the charges, if proven, in a contest complaint against a millsite are such as would require that a millsite be declared invalid, and no answer to the contest complaint is filed, the charges are deemed admitted and the land office manager properly determined the millsite null and void.

United States of America v. Grace Martin Hutchins et al., Contest No. 0170969-C-24 (Riverside) (Dec. 4, 1964)

CONTRACTS

GENERALLY

Where a timber sales contract places upon the purchaser the responsibility of establishing

CONTRACTS--Continued

GENERALLY--Continued

the boundaries between the Federal lands in the contract and other lands, the purchaser is not entitled to any refund or abatement of the purchase price where his failure to establish such boundaries caused it to trespass on State land and to incur liability for damages for such trespass.

Where a timber sales contract requires the purchaser to construct a road, it is not entitled to an adjustment of the contract price for a proportionate part of the road costs because the acreage of timber sold is less than that designated on a map attached to the contract.

Diamond Lumber Company, A-29970 (June 22, 1964)

The general rules of law stated in the Uniform Sales Act and in the sales provisions of the Uniform Commercial Code form part of the general Federal common law applicable to Government contracts, if not made inappropriate by such controlling factors as Federal statutory law. One such rule is the principle of cumulation of warranties.

Appeal of Federal Pacific Electric Company, IBCA-334 (Oct. 23, 1964) 71 I.D.384

ACTS OF GOVERNMENT

Under a contract for the construction of a transmission line containing the "Permits and Responsibility for Work, etc.," Clause of Standard Form 23A (March 1953), as implemented by a provision that "final acceptance is to be in writing at the time all work is completed to the satisfaction of the contracting officer," the contractor is responsible for repairing at his own expense a tower erected under the contract that before final acceptance of the line is damaged, without the fault of either party, by logs and debris thrown against the tower by forces of nature.

The allegation that the logs and debris may have belonged to the Government is not sufficient to shift liability for the tower repairs to it. Final acceptance may be deferred until after the contracting officer has had a reasonable opportunity to satisfy himself that the work fully conforms to all requirements of the contract. Assumption by the Government of responsibility for removal of the logs and debris is not an assumption of liability for repairs to the tower which are made by the contractor with knowledge that the Government disclaims responsibility for such repairs.

Appeal of Charles T. Parker Construction Co., IBCA-335 (Jan. 29, 1964) 71 I.D.6

CONTRACTS--Continued

ACTS OF GOVERNMENT--Continued

Performance by a contractor of work that is for the benefit of the Government and that is authorized, even though not required, by the Government provides an adequate foundation for the recognition of a constructive change.

Appeal of Moore Brothers Company, Inc., IBCA-336 (Aug. 4, 1964)

Performance by a contractor of work that is for the benefit of the Government and that is authorized, even though not required, by the Government provides an adequate foundation for the recognition of a constructive change.

Appeal of Allied Contractors, Inc., IBCA-322 (Oct. 6, 1964)

A claim by a construction contractor for additional compensation on account of the withdrawal of bids by prospective subcontractors because of apprehension that the contract might be administered too strictly by the Government is, in the absence of circumstances amounting to either an express change or a constructive change in the drawings or specifications, a claim for breach of contract that neither the contracting officer nor the Board of Contract Appeals has jurisdiction to decide.

Appeal of Clifford W. Gartzka, IBCA-399 (Dec. 24, 1964) 71 I.D. 487

ADDITIONAL COMPENSATION

Under a contract for the construction of a transmission line containing the "Permits and Responsibility for Work, etc.," Clause of Standard Form 23A (March 1953), as implemented by a provision that "final acceptance is to be in writing at the time all work is completed to the satisfaction of the contracting officer," the contractor is responsible for repairing at his own expense a tower erected under the contract that before final acceptance of the line is damaged, without the fault of either party, by logs and debris thrown against the tower by forces of nature.

The allegation that the logs and debris may have belonged to the Government is not sufficient to shift liability for the tower repairs to it. Final acceptance may be deferred until after the contracting officer has had a reasonable opportunity to satisfy himself that the work fully conforms to

all requirements of the contract. Assumption by the Government of responsibility for removal of the logs and debris is not an assumption of liability for repairs to the tower which are made by the contractor with knowledge that the Government disclaims responsibility for such repairs.

Appeal of Charles T. Parker Construction Co., IBCA-335 (Jan. 29, 1964) 71 I.D. 6

A contractor is not entitled to additional compensation on the theory of a changed condition, where the only basis for the claim is the absence of contract warnings as to possible rock and permafrost, if the contractor had the same opportunity before bidding, as did the Government, to ascertain that rock and permafrost were being encountered at nearby excavation work, and should have known that they probably would be found at the job site also.

Appeal of Promacs, Inc., IBCA-317 (Jan. 31, 1964) 71 I.D.11

Where the contractor's chosen method of performance of a contract for construction of a bridge was the building of a dike across the river for accommodating contractor's equipment, and the impounding of the river during high water due to insufficient openings in the dike caused erosion damage to the river bank, the work of restoring the bank at the Government's direction pursuant to contract provisions requiring the contractor at his own expense to restore landscape features damageo oy the contractor's operations, is not extra work. No additional compensation is due the contractor.

Appeal of Triangle Construction Company, IBCA-296 (Mar. 2, 1964) 71 I.D.73

Under the "Changed Conditions" clause of a contract for the stringing of electrical conductor on towers to be provided by the Government, where the contractor knows when bidding the job that some of the towers have not yet been completed, and where the Government fails to have these towers completed by the time when they are reasonably needed for stringing, an equitable adjustment is not allowable for the extra expense incurred by the contractor in moving crews back to these towers after they have become available for stringing, since such events do not amount to a changed condition, and since, if they did, such expense would be in the nature of consequential damages flowing from delay.

Appeal of Commonwealth Electric Company, IBCA-347 (Mar. 12, 1964) 71 I.D.106

A contractor is not entitled to additional compensation where the extra work on which the claim is founded was performed outside of the paylines established by the contracting officer pursuant to his contract authority. Under such circumstances the work was unnecessary and the contractor was a mere "volunteer" with respect thereto.

Appeal of R & M Contractors, Inc., IBCA-325 (Apr. 21, 1964) 71 I.D. 132

Where a contract provides for one unit price per cubic yard for borrow excavation and another, higher unit price for roadway grading and excavation, and due to unavailability of normal borrow sources the contractor is permitted to use temporarily certain borrow material excavated from an existing roadway embankment, the contractor's interpretation that such excavation of borrow material constituted roadway grading and excavation is unreasonable.

Appeal of Allied Contractors, Inc., IBCA-322 (Aug. 10, 1964)

A claim for additional compensation on account of failure of the Government to make timely delivery of equipment which it has agreed to furnish to the contractor is a claim for breach of contract. Such a claim is beyond the jurisdiction of a contracting officer or board of contract appeals to decide in the absence of a "Government-Furnished Property," clause or "Suspension of Work" clause that authorizes price adjustments.

Appeal of Electrical Builders, Inc., IBCA-406 (Aug. 12, 1964)

Where a contractor alleges that it encountered changed conditions cognizable under a standard "Changed Conditions" clause, and the contracting officer denies the claims without deciding that issue, the appeal will be remanded to the contracting officer for the issuance of new or supplementary findings of fact.

Appeal of Peter Reiss Construction Co., Inc. and Lew Norris Demolition Co., Inc., IBCA-351 (Sept. 29, 1964)

CONTRACTS--Continued

APPEALS

The Board will not normally grant a motion to dismiss on account of lack of timeliness or failure to comply with a procedural time requirement of a contract. United States v. Bianchi, 373 U.S. 709 (1963) requires the proper establishment of an adequate appeal record on all phases of a contract.

Appeal of Layne Texas Company, IBCA-362 (Jan. 30, 1964)

The filing of a brief in support of an appeal 43 CFR 4.5(b) is optional with appellant. Only the requirement concerning the filing of the notice of appeal is jurisdictional (43 CFR 4.16).

In the event an appeal is dismissed without prejudice, on request of the affected party, appeal will be reinstated automatically, provided such request complies with specific requirements, if any, of the prior dismissal order.

Appeal of James Hamilton Construction Company, IBCA-421-1-64 (Feb. 5, 1964)

The Board of Contract Appeals has authority to apply equitable principles in determining matters over which it has jurisdiction. It has authority to direct contract administration action by the contracting officer if the contractor has a substantive right to such action, and if such action pertains to a matter over which the Board has jurisdiction. Its powers and those of the Office of the Survey and Review complement each other.

The Board of Contract Appeals does not have jurisdiction to entertain an appeal with respect to a claim which the contracting officer has neither determined, nor refused to determine, nor delayed unreasonably in determining.

Appeal of Cosmo Construction Company, IBCA-412 (Feb. 20, 1964) 71 I.D.61

The timeliness of an appeal is governed by the period of time elapsed between the date when the findings of fact and decision were received by the contractor and the date when the notice of appeal was mailed or otherwise furnished to the contracting officer. The day on which the findings of fact and decision were received by the contractor is not included in the computation.

CONTRACTS--Continued

APPEALS--Continued

An appeal will be remanded to the contracting officer for issuance of new or supplemental findings of fact and decision where it appears that the contractor was in receivership prior to the filing of the notice of appeal and no information is contained in the appeal file concerning the present status of the receivership or as to the identity of the legal owners and representatives of the contractor.

Appeal of Edisto Construction Company, IBCA-409 (Feb. 28, 1964) 71 I.D. 68

An appeal from a findings of fact and decision of the contracting officer will be dismissed where the notice of appeal was not mailed or otherwise furnished within the 30 days specified in the standard form of "disputes" clause of the contract.

Appeal of L. W. Case Corporation and Hood Construction Company, IBCA-416 (Mar. 2, 1964)

A claim upon which no finding of fact or decision has been made by the contracting officer is outside the jurisdiction of the Board of Contract Appeals, even though presented in the same appeal with another claim that is within the jurisdiction of the Board, and will be remanded to the contracting officer for appropriate action, subject to the right of the contractor to appeal to the Board from a finding of fact or decision made in consequence of such remand.

The Board of Contract Appeals will hold proceedings upon a claim over which it has jurisdiction in abeyance for a reasonable time while a related claim is being processed at the contracting officer level, if the circumstances show that the orderly presentation and consideration of both claims probably will be facilitated by so doing.

Appeal of Paul A. Teegarden, IBCA-419-1-64 (Apr. 17, 1964)

Questions of law may be determined by the Board of Contract Appeals under a standard-form Government contract, as well as questions of fact.

CONTRACTS--Continued

APPEALS--Continued

A provision in a standard-form Government contract which specifically grants the contracting officer authority to decide particular matters does not exempt his decisions upon such matters from review under the "Disputes" clause of the contract, even though the provision is written in terms that call for the exercise of judgment and discretion by him, unless the provision affirmatively discloses an intent that decisions by the contracting officer with respect to such matters shall be final.

Decisions by a contracting officer not to waive the defense that a claim is untimely are subject to review under a standard-form "Disputes" clause, irrespective of whether the waiver authority of the contracting officer is express, as under the "Changes" clause, or is implied, as under some provisions of "Protests" clauses.

Decisions upon questions of law made by the Comptroller General are without binding effect in "Disputes" clause proceedings that have as their subject claims which, although they involve the same problems, are not the same claims, as were the subject of his rulings. In such situations the decisions of the Comptroller General constitute significant and valuable precedents, but should not be followed if outweighed by other precedents.

Appeal of Korshoj Construction Company, IBCA-321 (Apr. 29, 1964) 71 I.D. 152

Motions for reconsideration of a decision of the Board of Contract Appeals will be denied if they are based on factual contentions that are contrary to the preponderance of the evidence, determined by evaluating the testimony and exhibits as a whole in accordance with accepted criteria of evaluation, or if they are based on legal contentions that are inapplicable to the factual situation revealed by the record.

Montgomery-Macri Company and Western Line Construction Company, Inc., IBCA-59 and IBCA-72 (June 30, 1964) 71 I.D. 253

Final determinations concerning the disclosure to contractors of records that the custodian of the records is unwilling to produce are, as a matter of general practice, made by the Solicitor where the disclosure sought is not connected with any pending contract appeal, and by the Board of Contract Appeals where the records are sought in connection with a pending contract appeal.

CONTRACTS--Continued

APPEALS--Continued

The question of whether particular documents, sought by a contractor for use in connection with a contract appeal, are within or without the scope of the Government's privilege against disclosure is a question that calls for the evaluation of such factors as: (1) the relevancy of the documents to the subject matter involved in the appeal; (2) the necessity of the documents for the proving of the appellant's case; (3) the seriousness of the danger to the public interests which disclosure of the documents would involve; (4) the presence in the documents of factual data, on the one hand, or of policy opinions, on the other; (5) the existence of confidential relationships which disclosure of the documents might unduly impair; and (6) the normal desirability of full disclosure of all facts in the possession of either party to the appeal.

Appeal of Vitro Corporation of America, IBCA-376 (Aug. 6, 1964) 71 I.D. 301

An appeal from the contracting officer's decision will be dismissed for lack of jurisdiction where the period from the unrebutted presumptive date of receipt thereof by the contractor to the date of filing of the notice of appeal exceeds the jurisdictional time limitations of 30 days imposed by the "Disputes" clause.

Appeal of T. C. Bateson Construction Company and Cheves Construction Company, IBCA-414 (Sept. 24, 1964)

The Board of Contract Appeals has no jurisdiction to set off a claim in favor of the Government against a claim in favor of a contractor if the two claims are entirely independent of each other and the appeal involves only one of them.

The Board of Contract Appeals has no jurisdiction to determine whether fraud has been practiced or attempted within the meaning of the Forfeiture Statute (28 U.S.C. sec. 2514) or the False Claims Act (31 U.S.C. secs. 231-35).

Appeal of Rasmussen Construction Company, IBCA-358 (Oct. 1, 1964)

CONTRACTS--Continued

APPEALS--Continued

An appeal from findings of a contracting officer granting an extension of time which is taken solely on the ground that the findings state an erroneous reason for granting the extension will be dismissed where it appears that the challenged statement will have no relevancy or effect in the adjudication of any ungranted claim of the appellant.

Appeals of Commonwealth Electric Company and A. S. Schulman Electric Company, IBCA Nos. 410, 417 (Oct. 12, 1964) 71 I.D. 365

An appeal will be sustained or denied, as the case may be, to the extent authorized by an agreement between the parties, as set forth in an appropriate stipulation filed with the Board of Contract Appeals.

Appeal of Metalab Equipment Company, IBCA-450-7-64 (Nov. 10, 1964)

An appeal will be sustained or denied, as the case may be, to the extent authorized by an agreement between the parties, as set forth in an appropriate stipulation filed with the Board of Contract Appeals.

Appeal of Wells-Stewart Construction Company, IBCA-378 (Nov. 17, 1964)

AUTHORITY TO MAKE

Section 14 of the Reclamation Project Act of 1939 (53 Stat. 1197, 43 U.S.C. 389) and section 5(b) of the Bonneville Project Act (50 Stat. 734, 16 U.S.C. 832d(d)) authorize the Bonneville Power Administrator to enter into exchange agreements, subject only to his determination that such agreements are in the interest of the United States and economical operation.

Canadian Entitlement Exchange Agreements, M-36669 (July 20, 1964) 71 I.D. 315

CONTRACTS--Continued

BIDS

Generally

A bidder for a coal lease may not modify his bonus bid by decreasing the amount to be paid immediately and extending the time for payment of the balance after the bids have been opened, even though his bid was the only one submitted in response to the published invitation for bids, and he is properly required to pay the full amount of his bid as a condition precedent to issuance of the lease.

Malcolm N. McKinnon, A-29979, A-29996, June 12, 1964

Mistakes

A contract may not be reformed on account of a unilateral mistake of fact that was made by the contractor in computing the amount of his bid, but that is not alleged as a ground for relief until after the bid has been accepted, unless (1) the contracting officer was on actual or constructive notice, at the time of accepting the bid, that a mistake probably had been made in computing the amount, and (2) the contracting officer knew at that time what the amount of the bid would have been if the mistake had not been made.

Appeal of Clifford W. Gartzka, IBCA-399 (Jan. 22, 1964)

An appeal will be dismissed where the claim on which it is based arose from a mistake in the contractor's bid due to an erroneous price quoted to the contractor by a supplier.

Appeal of Philip Renzi & Son, Inc., IBCA-446-6-64 (Sept. 9, 1964)

BREACH

A claim for additional compensation on account of delay by the Government in performing its own obligations under a contract is not a claim for relief under the contract that the contracting officer or a board of contract appeals would have authority to adjudicate by virtue of a standard-form "Disputes" clause, since it is a claim for breach of contract.

Appeal of Commonwealth Electric Company, IBCA-347 (Mar. 12, 1964) 71 I.D.106

CONTRACTS--Continued

BREACH--Continued

The authority of the Board to decide disputes arising under the contract, including questions of law (43CFR 4.4), does not include authority to grant relief for breach of contract, since the latter is not a dispute arising under the contract.

Appeal of Peter Kiewit Sons' Company, IBCA-405 (Mar. 13, 1964)

The provisions of the Bonneville Project Act which authorize settlement of claims against the Bonneville Power Administration are applicable to claims for breach of contract involved in appeals taken to the Board of Contract APpeals from decisions of contracting officers of the Bonneville Power Administration.

Montgomery-Macri Company and Western Line Construction Company, Inc., IBCA-59 and IBCA-72 (June 30, 1964) 71 I.D. 253

The presence in a borrow pit of clay material which is unsatisfactory for use as backfill does not constitute a changed condition, where the boring logs indicated that clay material was present in the area of the project and the contract provisions contemplated no allowance for the type of material encountered and for use of additional borrow pits where required. The appeal will be dismissed where contractor's claim is based on alleged Government delay in locating additional borrow pits, since this is a claim for breach of contract and hence outside the Board's jurisdiction.

Appeal of Allied Contractors, Inc., IBCA-322 (Aug. 10, 1964)

A claim for additional compensation on account of failure of the Government to make timely delivery of equipment which it has agreed to furnish to the contractor is a claim for breach of contract. Such a claim is beyond the jurisdiction of a contracting officer or board of contract appeals to decide in the absence of a "Government-Furnished Property," clause or "Suspension of Work" clause that authorizes price adjustments.

Appeal of Electrical Builders, Inc., IBCA-406 (Aug. 12, 1964)

CONTRACTS--Continued

BREACH--Continued

An appeal will be dismissed for lack of jurisdiction where the contractor's claim is based on breach of contract, involving damage to the contractor's work site caused by water released by the Government from a storage reservoir, in alleged violation of an implied obligation not to interfere with the performance of the contract.

Appeal of Electric Properties Company, IBCA-443-5-64 (Sept. 3, 1964)

The inclusion of a Guarantee clause in a standard-form supply contract is not inconsistent with, and does not override, the provision in the Inspection clause which excepts latent defects from the conclusive effect of a final acceptance. Hence, the expiration of the guaranty period does not preclude the Government from exercising the remedies specified in the inspection clause with respect to latent defects discovered after such expiration.

Appeal of Federal Pacific Electric Company, IBCA-334 (Oct. 23, 1964) 71 I.D. 384

A claim by a construction contractor for additional compensation on account of the withdrawal of bids by prospective subcontracters because of delay by the Government in issuing notice to proceed to the prime contractor is, in the absence of a contract provision for equitable adjustment of the contract price on account of Government delay, a claim for breach of contract that neither the contracting officer nor the Board of Contract Appeals has jurisdiction to decide.

A claim by a construction contractor for additional compensation on account of the withdrawal of bids by prospective subcontractors because of apprehension that the contract might be administered too strictly by the Government is, in the absence of circumstances amounting to either an express change or a constructive change in the drawings or specifications, a claim for breach of contract that neither the contracting officer nor the Board of Contract Appeals has jurisdiction to decide.

Appeal of Clifford W. Gartzka, IBCA-399 (Dec. 24, 1964) 71 I.D. 487

CONTRACTS--Continued

CHANGED CONDITIONS

A contractor is not entitled to additional compensation on the theory of a changed condition, where the only basis for the claim is the absence of contract warnings as to possible rock and permafrost, if the contractor had the same opportunity before bidding, as did the Government, to ascertain that rock and permafrost were being encountered at nearby excavation work, and should have known that they probably would be found at the job site also.

Appeal of Promacs, Inc., IBCA-317 (Jan. 31, 1964) 71 I. D. 11

Under the "Changed Conditions" clause of a contract for the stringing of electrical conductor on towers to be provided by the Government, where the contractor knows when bidding the job that some of the towers have not yet been completed, and where the Government fails to have these towers completed by the time when they are reasonably needed for stringing, an equitable adjustment is not allowable for the extra expense incurred by the contractor in moving crews back to these towers after they have become available for stringing, since such events do not amount to a changed condition, and since, if they did, such expense would be in the nature of consequential damages flowing from delay.

Appeal of Commonwealth Electric Company, IBCA-347 (Mar. 12, 1964) 71 I. D. 106

The presence in a borrow pit of clay material which is unsatisfactory for use as backfill does not constitute a changed condition, where the boring logs indicated that clay material was present in the area of the project and the contract provisions contemplated no allowance for the type of material encountered and for use of additional borrow pits where required. The appeal will be dismissed where contractor's claim is based on alleged Government delay in locating additional borrow pits, since this is a claim for breach of contract and hence outside the Board's jurisdiction.

Appeal of Allied Contractors, Inc., IBCA-322 (Aug. 10, 1964)

Neither weather phenomena nor alterations in the physical features of the work site caused by weather phenomena, after initiation of the process of contract formation, constitute changed conditions within the meaning of Clause 4 of a standard-form construction contract. Where the subsurface moisture conditions found when driving test holes are correctly recorded in the contract, neither the underground water encountered during contract performance nor the earth caving induced thereby constitute changed conditions if they are caused by rainfall greater than that which prevailed when the test holes were driven, irrespective of whether the excess rainfall was a normal seasonal event or was an abnormal and unusual occurrence.

CONTRACTS--Continued

CHANGED CONDITIONS--Continued

Delay by the Government in performing its own obligations under a contract does not constitute a changed condition within the meaning of Clause 4 of a standard-form construction contract.

Appeal of Concrete Construction Corporation, IBCA-432-3-64 (Nov. 10, 1964) 71 I. D. 420

CHANGES AND EXTRAS

Where the contractor's chosen method of performance of a contract for construction of a bridge was the building of a dike across the river for accommodating contractor's equipment, and the impounding of the river during high water due to insufficient openings in the dike caused erosion damage to the river bank, the work of restoring the bank at the Government's direction pursuant to contract provisions requiring the contractor at his own expense to restore landscape features damaged by the contractor's operations, is not extra work. No additional compensation is due the contractor.

Appeal of Triangle Construction Company, IBCA-296 (Mar. 2, 1964) 71 I. D. 73

A contractor is not entitled to additional compensation where the extra work on which the claim is founded was performed outside of the paylines established by the contracting officer pursuant to his contract authority. Under such circumstances the work was unnecessary and the contractor was a mere "volunteer" with respect thereto.

A contractor is entitled to an extension of time pursuant to the Clause 5 of Standard Form 23-A (April 1961 edition) where unforeseeable overrun of estimated quantities delayed the performance of the contract.

Appeal of R & M Contractors, Inc., IBCA-325 (Apr. 21, 1964) 71 I. D. 132

CONTRACTS--Continued

CHANGES AND EXTRAS--Continued

In a contract for the construction of an electrical distribution system which was required to be completed within 60 days, a contractor is not entitled to additional time for performance, in the absence of proof that an allowance of 35 days, made pursuant to the Changes clause (Clause 3), for a change from one to two high-voltage bushings on transformers was inadequate.

Appeal of A and H Builders, Inc., IBCA-400 (May 7, 1964)

Performance by a contractor of work that is for the benefit of the Government and that is authorized, even though not required, by the Government provides an adequate foundation for the recognition of a constructive change.

Appeal of Moore Brothers Company, Inc., IBCA-336 (Aug. 4, 1964)

Where contract drawings and specifications are misleading a requirement by the Government, that work be performed in accordance with its erroneous interpretation of the misleading information, constitutes a constructive change order for which the contractor is entitled to an equitable adjustment.

Appeal of Rasmussen Construction Company, IBCA-358 (Aug. 20, 1964)

Performance by a contractor of work that is for the benefit of the Government and that is authorized, even though not required, by the Government provides an adequate foundation for the recognition of a constructive change.

Appeal of Allied Contractors, Inc., IBCA-322 (Oct. 6, 1964)

COMPTROLLER GENERAL

Decisions upon questions of law made by the Comptroller General are without binding effect in "Disputes" clause proceedings that have as their subject claims which, although they involve the same problems, are not the same claims, as were the subject of his rulings. In such situations the decisions of the Comptroller General constitute significant and valuable precedents,

CONTRACTS--Continued

COMPTROLLER GENERAL--Continued

but should not be followed if outweighed by other precedents.

Appeal of Korshoj Construction Company, IBCA-321 (Apr. 29, 1964) 71 I.D. 152

The opinion of the Comptroller General (Dec. Comp. Gen. B-149016, B-149083, July 16, 1962) affirming the authority of the Administrator to execute exchange agreements pertaining to the output of the generation to be constructed in connection with the Hanford NPR is applicable as affirmation of such authority to execute Canadian Entitlement Exchange Agreements.

Canadian Entitlement Exchange Agreements, M-36669 (July 20, 1964) 71 I.D. 315

CONTRACTING OFFICER

Where a claim for a time extension is presented to the contracting officer, it is the duty of the latter to make an impartial and objective determination of all questions that are directly relevant to the extent of the delays upon which such claim is founded.

Appeal of Edisto Construction Company, IBCA-409 (Feb. 28, 1964) 71 I.D. 68

A contractor is not entitled to additional compensation where the extra work on which the claim is founded was performed outside of the paylines established by the contracting officer pursuant to his contract authority. Under such circumstances the work was unnecessary and the contractor was a mere "volunteer" with respect thereto.

Appeal of R & M Contractors, Inc., IBCA-325 (Apr. 21, 1964) 71 I.D. 132

A provision in a standard-form Government contract which specifically grants the contracting officer authority to decide particular matters does not execpt his decisions upon such matters from review under the "Disputes" clause of the contract, even though the provision is written in terms that call for the exercise of judgment and discretion by him, unless the provision affirmatively discloses an intent that decisions by the contracting officer with respect to such matters shall be final.

CONTRACTS--Continued

CONTRACTING OFFICER--Continued

Decisions by a contracting officer not to waive the defense that a claim is untimely are subject to review under a standard-form "Disputes" clause, irrespective of whether the waiver authority of the contracting officer is express, as under the "Changes" clause, or is implied, as under some provisions of "Protests" clauses.

Appeal of Korshoj Construction Company, IBCA-321 (Apr. 29, 1964) 71 I.D. 152

Where a contractor alleges that it encountered changed conditions cognizable under a standard "Changed Conditions" clause, and the contracting officer denies the claims without deciding that issue, the appeal will be remanded to the contracting officer for the issuance of new or supplementary findings of fact.

Appeal of Peter Reiss Construction Co., Inc. and Lew Norris Demolition Co., Inc., IBCA-351 (Sept. 29, 1964)

CONTRACTOR

An appeal will not be dismissed for technical defects consisting of the inadvertent omission of the corporate name of the contractor in the notice of appeal and the substitution therefor of the name of the contractor's representative or officer.

Appeal of Edisto Construction Company, IBCA-409 (Feb. 28, 1964) 71 I.D. 68

DAMAGES

Liquidated Damages

An extension of time for performance and concomitant remission of an assessment of liquidated damages for failure to perform a contract within the time required is denied, where the evidence fails to meet the criteria of excusability prescribed by Clause 5(c) of Standard Form 23A (Mar. 1953 Edition).

Appeal of A and H Builders, Inc., IBCA-400 (May 7, 1964)

CONTRACTS--Continued

DAMAGES--Continued

Liquidated Damages--Continued

Where damages for default by a bidder in a timber sale have been liquidated by the parties in the amount of a deposit submitted with the bid, such liquidated damages are for assessment as measuring the extent of the bidder's obligation in the matter without the necessity of inquiring into the question of the actual damages incurred.

Chester C. Gibby, A-30048 (June 30, 1964) 71 I.D. 247

DELAYS OF CONTRACTOR

Where a claim for a time extension is presented to the contracting officer, it is the duty of the latter to make an impartial and objective determination of all questions that are directly relevant to the extent of the delays upon which such claim is founded.

Appeal of Edisto Construction Company, IBCA-409 (Feb. 28, 1964) 71 I.D. 68

Where official records of water levels and rates of flow in a river over a period of 9 years show that high water occurred on 195 occassions, the occurrence of such high water on several occasions during more than a year of contract performance is not an unforeseeable cause of delay within the meaning of Clause 5 of Standard Form 23A.

Appeal of Triangle Construction Company, IBCA-296 (Mar. 2, 1964) 71 I.D. 73

Extensions of time in supply contracts for the delivery of circuit breakers are denied, where a prime contractor fails to meet the criteria of excusability prescribed in the standard Default clause of the Government supply contract, by failure to order a critical component for the breakers until about 9 months subsequent to the dates of award of the contracts.

Appeal of Allis-Chalmers Manufacturing Company, IBCA Nos. 370, 373 (Apr. 6, 1964)

A contractor is entitled to an extension of time pursuant to the Clause 5 of Standard Form 23-A

TRACTS--Continued

DELAYS OF CONTRACTOR--Continued

(April 1961 edition) where unforeseeable overruns of estimated quantities delayed the performance of the contract.

Appeal of R & M Contractors, Inc., IBCA-325
(Apr. 21, 1964) 71 I.D. 132

Delay in performance occasioned by a contractor's failure to have a major supplier, who had been engaged by a subcontractor, informed promptly concerning pertinent requirements of the specifications is not beyond the control of, and without the fault or negligence of, the prime contractor.

Appeal of A and H Builders, Inc., IBCA-400
(May 7, 1964)

Where the date for completion of a contract falls on a Sunday or a legal holiday, the next succeeding working day is considered to be the required completion date, provided that the contract is completed on that date. If, however, the contract is not completed until a subsequent date, the Sunday or holiday on which the completion date falls, and succeeding Sundays and holidays, are included in the computation of the period of delay in completion, unless specifically excepted by the terms of the contract.

Appeal of R & M Contractors, Inc., IBCA-325
(May 28, 1964) 71 I.D. 216

An appeal based on a request for extension of time for performance will be denied where the delay of the contractor was caused by the default of its subcontractor, whose failure to perform was not excusable within the meaning of Clause 11, Default, of Standard Form 32 (Sept. 1961 Ed.).

Appeal of Truitt Metal Fabricators, Inc.,
IBCA-354 (Sept. 9, 1964)

The failure of a contractor to perform while awaiting a Government decision concerning a mistake in its bid is not an excusable delay, within the meaning of Clause 11 Default of Standard Form 32 (September 1961 edition.)

Appeal of Auto-Control Laboratories, Inc.,
IBCA-424 (Sept. 21, 1964)

CONTRACTS--Continued

DELAYS OF CONTRACTOR--Continued

The failure of a contractor to perform while awaiting a Government decision concerning a mistake in its bid is not an excusable delay, within the meaning of Clause 11 Default of Standard Form 32 (September 1961 edition.)

Appeal of Auto-Control Laboratories, Inc.,
IBCA-424 (Sept. 21, 1964)

Difficulties experienced by a prime contractor's supplier in manufacturing paint that would pass the tests prescribed by the contract specifications are not excusable grounds for an extension of delivery time within the meaning of the standard Default clause of a Government supply contract.

Appeal of Richmond Engineering Co., Inc.,
IBCA-426-2-64 (Oct. 1, 1964)

DELAYS OF GOVERNMENT

Under the "Changed Conditions" clause of a contract for the stringing of electrical conductor on towers to be provided by the Government, where the contractor knows when bidding the job that some of the towers have not yet been completed, and where the Government fails to have these towers completed by the time when they are reasonably needed for stringing, an equitable adjustment is not allowable for the extra expense incurred by the contractor in moving crews back to these towers after they have become available for stringing, since such events do not amount to a changed condition, and since, if they did, such expense would be in the nature of consequential damages flowing from delay.

A claim for additional compensation on account of delay by the Government in performing its own obligations under a contract is not a claim for relief under the contract that the contracting officer or a board of contract appeals would have authority to adjudicate by virtue of a standard-form "Disputes" clause, since it is a claim for breach of contract.

Appeal of Commonwealth Electric Company,
IBCA-347 (Mar. 12, 1964) 71 I.D. 106

The presence in a borrow pit of clay material which is unsatisfactory for use as backfill does not constitute a changed condition, where the boring logs indicated that clay material was present in the area of the project and the contract provisions contemplated no allowance for

CONTRACTS--Continued

DELAYS OF GOVERNMENT--Continued

the type of material encountered and for use of additional borrow pits where required. The appeal will be dismissed where contractor's claim is based on alleged Government delay in locating additional borrow pits, since this is a claim for breach of contract and hence outside the Board's jurisdiction.

Appeal of Allied Contractors, Inc., IBCA-322 (Aug. 10, 1964)

A claim for additional compensation on account of failure of the Government to make timely delivery of equipment which it has agreed to furnish to the contractor is a claim for breach of contract. Such a claim is beyond the jurisdiction of a contracting officer or board of contract appeals to decide in the absence of a "Government-Furnished Property," clause or "Suspensions of Work" clause that authorizes price adjustments.

Appeal of Electrical Builders, Inc., IBCA-406 (Aug. 12, 1964)

Delay by the Government in performing its own obligations under a contract does not constitute a changed condition within the meaning of Clause 4 of a standard-form construction contract.

Appeal of Concrete Construction Corporation, IBCA-432-3-64 (Nov. 10, 1964) 71 I. D. 420

A claim by a construction contractor for additional compensation on account of the withdrawal of bids by prospective subcontractors because of delay by the Government in issuing notice to proceed to the prime contractor is, in the absence of a contract provision for equitable adjustment of the contract price on account of Government delay, a claim for breach of contract that neither the contracting officer nor the Board of Contract Appeals has jurisdiction to decide.

Appeal of Clifford W. Gartzka, IBCA-399 (Dec. 24, 1964) 71 I. D. 487

DRAWINGS

Where the contract specifications and drawings are not ambiguous, there is no need to construe the contract. The contractor's interpretation being

CONTRACTS--Continued

DRAWINGS--Continued

unreasonable, the doctrine of contra proferentem does not apply.

Appeal of R & M Contractors, Inc., IBCA-325 (Apr. 21, 1964) 71 I. D. 132

Where contract drawings and specifications are misleading a requirement by the Government, that work be performed in accordance with its erroneous interpretation of the misleading information, constitutes a constructive change order for which the contractor is entitled to an equitable adjustment.

Where the contract drawings and specifications are not ambiguous, and the contractor's interpretation is unreasonable, the doctrine of contra proferentem does not apply.

Appeal of Rasmussen Contruction Company, IBCA-358 (Aug. 20, 1964)

INTERPRETATION

Under a contract for the construction of a transmission line containing the "Permits and Responsibility for Work, etc.," Clause of Standard Form 23A (March 1953), as implemented by a provision that "final acceptance is to be in writing at the time all work is completed to the satisfaction of the contracting officer," the contractor is responsible for repairing at his own expense a tower erected under the contract that before final acceptance of the line is damaged, without the fault of either party, by logs and debris thrown against the tower by forces of nature.

The allegation that the logs and debris may have belonged to the Government is not sufficient to shift liability for the tower repairs to it. Final acceptance may be deferred until after the contracting officer has had a reasonable opportunity to satisfy himself that the work fully conforms to all requirements of the contract. Assumption by the Government of responsibility for removal of the logs and debris is not an assumption of liability for repairs to the tower which are made by the contractor with knowledge that the Government disclaims responsibility for such repairs.

Appeal of Charles T. Parker Construction Co., IBCA-335 (Jan. 29, 1964) 71 I. D. 6

CONTRACTS--Continued

INTERPRETATION--Continued

Where a duly issued modification of specifications incorporated in the contract eliminates provisions for adjustment of price for excavation in the event that rocks of a certain size and extent are encountered, and substitutes a provision that all excavation shall be paid for at the stipulated contract price without any adjustment, an interpretation by the contractor of such modification, as constituting a representation by the Government that no rock would be encountered in the excavation work, is so strained as to be unreasonable. The unreasonableness of the interpretation precludes application of the doctrine of contra proferentem.

Appeal of Promacs, Inc., IBCA-317 (Jan. 31, 1964) 71 I. D. 11

An appeal will not be dismissed where a waiver and exception provision in a payment voucher omitted mention of one of the contractor's claims, but did not provide for release of all claims not excepted, where it appears that the voucher was prepared prior to the original submission of the omitted claim and the conduct of both parties at all times until the hearing of the appeal indicated an intent to preserve the claim. The presentation of such a motion to dismiss during the hearing is untimely.

Appeal of Triangle Construction Company, IBCA-296 (Mar. 2, 1964) 71 I. D. 73

A hearing will be granted where there are factual issues to be resolved and the contractor has requested a hearing. In such circumstances a motion to dismiss will be denied as being premature.

Appeal of R & R Construction Company, IBCA-413 (Mar. 16, 1964)

Where the contract specifications and drawings are not ambiguous, there is no need to construe the contract. The contractor's interpretation being unreasonable, the doctrine of contra proferenten does not apply.

Appeal of R & M Contractors, Inc., IBCA-325 (Apr. 21, 1964) 71 I. D. 132

CONTRACTS--Continued

INTERPRETATION--Continued

A provision in a standard-form Government contract which specifically grants the contracting officer authority to decide particular matters does not exempt his decisions upon such matters from review under the "Disputes" clause of the contract, even though the provision is written in terms that call for the exercise of judgment and discretion by him, unless the provision affirmatively discloses an intent that decisions by the contracting officer with respect to such matters shall be final.

Appeal of Korshoj Construction Company, IBCA-321 (Apr. 29, 1964) 71 I. D. 152

Where a timber sale contract provides for the sale of all timber in a "contract area" shown on a map attached to the contract and the map shows the contract area as containing a clear cut area, designated as containing 47.5 acres, which is bounded by a legal subdivision line and by a line that is blazed, branded, or posted and the contract provides that the purchaser has the responsibility of locating legal subdivision lines, the contract is not to be interpreted as obliging the Government to sell the purchaser the timber on 47.5 acres but the timber in the precise area outlined on the map, and the purchaser is not entitled to a refund because the clear cut area actually comprises only 38.9 acres.

Diamond Lumber Company, A-29970 (June 22, 1964)

Where a contract provides for one unit price per cubic yard for borrow excavation and another, higher unit price for roadway grading and excavation, and due to unavailability of normal borrow sources the contractor is permitted to use temporarily certain borrow material excavated from an existing roadway embankment, the contractor's interpretation that such excavation of borrow material constituted roadway grading and excavation is unreasonable.

Appeal of Allied Contractors, Inc., IBCA-322 (Aug. 10, 1964)

Where contract drawings and specifications are misleading a requirement by the Government, that work be performed in accordance with its erroneous interpretation of the misleading information, constitutes a constructive change order for which the contractor is entitled to an equitable adjustment.

CONTRACTS--Continued

INTERPRETATION--Continued

Where the contract drawings and specifications are not ambiguous, and the contractor's interpretation is unreasonable, the doctrine of contra proferentem does not apply.

Appeal of Rasmussen Contruction Company, IBCA-358 (Aug. 20, 1964)

The general rules of law stated in the Uniform Sales Act and in the sales provisions of the Uniform Commercial Code form part of the general Federal common law applicable to Government contracts, if not made inappropriate by such controlling factors as Federal statutory law. One such rule is the principle of cumulation of warranties.

The inclusion of a Guarantee clause in a standard-form supply contract is not inconsistent with, and does not override, the provision in the Inspection clause which excepts latent defects from the conclusive effect of a final acceptance. Hence, the expiration of the guaranty period does not preclude the Government from exercising the remedies specified in the Inspection clause with respect to latent defects discovered after such expiration.

Appeal of Federal Pacific Electric Company, IBCA-334 (Oct. 23, 1964) 71 I.D.384

MODIFICATION

A bidder for a coal lease may not modify his bonus bid by decreasing the amount to be paid immediately and extending the time for payment of the balance after the bids have been opened, even though his bid was the only one submitted in response to the published invitation for bids, and he is properly required to pay the full amount of his bid as a condition precedent to issuance of the lease.

Malcolm N. McKinnon, A-29979, A-29996, June 12, 1964

NOTICES

The right of a contractor to compensation is dependent upon the timely compliance with the time requirement of a pertinent contract provision. However, this rule is not absolute and subject to exceptions.

Appeal of Layne Texas Company, IBCA-362 (Jan. 30, 1964)

CONTRACTS--Continued

PAYMENTS

An appeal will not be dismissed where a waiver and exception provision in a payment voucher omitted mention of one of the contractor's claims, but did not provide for release of all claims not excepted, where it appears that the voucher was prepared prior to the original submission of the omitted claim and the conduct of both parties at all times until the hearing of the appeal indicated an intent to preserve the claim. The presentation of such a motion to dismiss during the hearing is untimely.

Appeal of Triangle Construction Company, IBCA-296 (Mar. 2, 1964) 71 I. D. 73

PERFORMANCE

Under a contract for the construction of a transmission line containing the "Permits and Responsibility for Work, etc.," Clause of Standard Form 23A (March 1953), as implemented by a provision that "final acceptance is to be in writing at the time all work is completed to the satisfaction of the contracting officer," the contractor is responsible for repairing at his own expense a tower erected under the contract that before final acceptance of the line is damaged, without the fault of either party, by logs and debris thrown against the tower by forces of nature.

The allegation that the logs and debris may have belonged to the Government is not sufficient to shift liability for the tower repairs to it. Final acceptance may be deferred until after the contracting officer has had a reasonable opportunity to satisfy himself that the work fully conforms to all requirements of the contract. Assumption by the Government of responsibility for removal of the logs and debris is not an assumption of liability for repairs to the tower which are made by the contractor with knowledge that the Government disclaims responsibility for such repairs.

Appeal of Charles T. Parker Construction Co., IBCA-335 (Jan. 29, 1964) 71 I. D. 6

Where the contractor's chosen method of performance of a contract for construction of a bridge was the building of a dike across the river for accommodating contractor's equipment, and the impounding of the river during high water due to insufficient openings in the dike caused erosion damage to the river bank, the work of restoring the bank at the Government's direction pursuant to contract provisions requiring the contractor at his own expense to restore landscape features

CONTRACTS--Continued

PERFORMANCE--Continued

damaged by the contractor's operations, is not extra work. No additional compensation is due the contractor.

Appeal of Triangle Construction Company, IBCA-296 (Mar. 2, 1964) 71 I. D. 73

A contractor is entitled to an extension of time pursuant to the Clause 5 of Standard Form 23-A (April 1961 edition) where unforeseeable overruns of estimated quantities delayed the performance of the contract.

Appeal of R & M Contractors, Inc., IBCA-325 (Apr. 21, 1964) 71 I. D. 132

An interior void in the rotating insulator column of an oil circuit breaker which, at the time of final acceptance of the breaker, was not known to the Government and could not have been discovered by it through reasonable methods of pre-acceptance inspection is a latent defect within the meaning of the Inspection clause of a standard-form supply contract.

Appeal of Federal Pacific Electric Company, IBCA-334 (Oct. 23, 1964 71 I. D. 384

The Government as a party to a construction contract is entitled to the performance specified in the contract, irrespective of whether such performance conforms to customary construction standards in the area, and need not accept something else that, from a functional standpoint, may be "just as good."

Appeal of Clifford W. Gartzka, IBCA-399 (Dec. 24, 1964) 71 I. D. 487

SPECIFICATION

Where a duly issued modification of specifications incorporated in the contract eliminates provisions for adjustment of price for excavation in the event that rocks of a certain size and extent are encountered, and substitutes a provision that all excavation shall be paid for at the stipulated contract price without any adjustment, an interpretation by the contractor of such modification, as constituting a representation by the Government that no rock would be encountered in the excavation work, is so strained as to be unreasonable. The unreasonableness of the interpretation precludes application of the doctrine of contra proferentem.

Appeal of Promacs, Inc., IBCA-317 (Jan. 31, 1964) 71 I. D. 11

Where the contract specifications and drawings are not ambiguous, there is no need to construe the contract. The contractor's interpretation being unreasonable, the doctrine of contra proferentem does not apply.

Appeal of R & M Contractors, Inc., IBCA-325 (Apr. 21, 1964) 71 I. D. 132

Where a contract provides for one unit price per cubic yard for borrow excavation and another, higher unit price for roadway grading and excavation, and due to unavailability of normal borrow sources the contractor is permitted to use temporarily certain borrow material excavated from an existing roadway embankment, the contractor's interpretation that such excavation of borrow material constituted roadway grading and excavation is unreasonable.

Appeal of Allied Contractors, Inc., IBCA-322 (Aug. 10, 1964)

Where contract drawings and specifications are misleading a requirement by the Government, that work be performed in accordance with its erroneous interpretation of the misleading information, constitutes a constructive change order for which the contractor is entitled to an equitable adjustment.

Where the contract drawings and specifications are not ambiguous, and the contractor's interpretation is unreasonable, the doctrine of contra proferentem does not apply.

Appeal of Rasmussen Contruction Company, IBCA-358 (Aug. 20, 1964)

CONTRACTS--Continued

SUBCONTRACTORS AND SUPPLIERS

Manufacturing difficulties experienced by first and second tier subcontractors in the assembly of bayonet contacts for circuit breakers do not form excusable grounds for extensions of delivery time within the meaning of the standard Default clause of the Government supply contract.

Appeal of Allis-Chalmers Manufacturing Company, IBCA Nos. 370, 373 (Apr. 6, 1964)

An appeal based on a request for extension of time for performance will be denied where the delay of the contractor was caused by the default of its subcontractor, whose failure to perform was not excusable within the meaning of Clause 11, Default, of Standard Form 32 (Sept. 1961 Ed.).

Appeal of Truitt Metal Fabricators, Inc., IBCA-354 (Sept. 9, 1964)

Difficulties experienced by a prime contractor's supplier in manufacturing paint that would pass the tests prescribed by the contract specifications are not excusable grounds for an extension of delivery time within the meaning of the standard Default clause of a Government supply contract.

Appeal of Richmond Engineering Co., Inc., IBCA-426-2-64 (Oct. 1, 1964)

SUBSTANTIAL EVIDENCE

Motions for reconsideration of a decision of the Board of Contract Appeals will be denied if they are based on factual contentions that are contrary to the preponderance of the evidence, determined by evaluating the testimony and exhibits as a whole in accordance with accepted criteria of evaluation, or if they are based on legal contentions that are inapplicable to the factual situation revealed by the record.

Montgomery-Macri Company and Western Line Construction Company, Inc., IBCA-59 and IBCA-72 (June 30, 1964) 71 I.D.253

CONTRACTS--Continued

UNFORESEEABLE CAUSES

Where official records of water levels and rates of flow in a river over a period of 9 years show that high water occurred on 195 occasions, the occurrence of such high water on several occasions during more than a year of contract performance is not an unforeseeable cause of delay within the meaning of Clause 5 of Standard Form 23A.

Appeal of Triangle Construction Company, IBCA-296 (Mar. 2, 1964) 71 I. D. 73

Neither weather phenomena nor alterations in the physical features of the work site caused by weather phenomena, after initiation of the process of contract formation, constitute changed conditions within the meaning of Clause 4 of a standard-form construction contract. Where the subsurface moisture conditions found when driving test holes are correctly recorded in the contract, neither the underground water encountered during contract performance nor the earth caving induced thereby constitute changed conditions if they are caused by rainfall greater than that which prevailed when the test holes were driven, irrespective of whether the excess rainfall was a normal seasonal event or was an abnormal and unusual occurrence.

Appeal of Concrete Construction Corporation, IBCA-432-3-64 (Nov. 10, 1964) 71 I. D. 420

WAIVER AND ESTOPPEL

An appeal will not be dismissed where a waiver and exception provision in a payment voucher omitted mention of one of the contractor's claims, but did not provide for release of all claims not excepted, where it appears that the voucher was prepared prior to the original submission of the omitted claim and the conduct of both parties at all times until the hearing of the appeal indicated an intent to preserve the claim. The presentation of such a motion to dismiss during the hearing is untimely.

Appeal of Triangle Construction Company, IBCA-296 (Mar. 2, 1964) 71 I. D. 73

Decisions by a contracting officer not to waive the defense that a claim is untimely are subject to review under a standard-form "Disputes" clause, irrespective of whether the waiver authority of the contracting officer is express under the "Changes" clause, or is implied, a under some provisions of "Protests" clauses.

Appeal of Korshoj Construction Company, IBCA-321 (Apr. 29, 1964) 71 I. D. 152

NVEYANCES

INTEREST CONVEYED

In construing the scope of an easement acquired for electric transmission line the interpretation placed upon the instrument by the parties for many years is entitled to great weight.

Claim of Port Blakely Mill Company, T-P-320 (May 1, 1964) 71 I. D. 217

DESERT LAND ENTRY

GENERALLY

A desert land entryman will not be allowed an amendment to enlarge the area of his patented entry under regulation 43 CFR 104.10 when the new area is desired for purposes of construction of a dwelling and other buildings and not that of reclamation.

Leonard C. Olson, A-29962 (Mar. 3, 1964)

A desert land entryman who wishes to prevent his entry from being impressed with a reservation of oil and gas to the United States is properly required to file with the land office a petition for reclassification of the land as nonmineral in character when, subsequent to the granting of the desert land application and prior to the submission of final proof, it is determined by the United States that the land is prospectively valuable for oil and gas.

Donald S. Tedford, A-29963 (Mar. 24, 1964)

Where the explanation given for the failure to comply with the requirements of the desert land law within the statutory life of the entry is inadequate, a patent for the entry may not be granted under the principles of equitable adjudication.

Joe Ann Chatham, Arizona 03514 (Oct. 20, 1964)

DESERT LAND ENTRY--Continued

APPLICATIONS

Where two desert land applicants enter into an executory contract with another person for the development of the lands applied for, payment to be made by the conveyance to the developer of the land applied for in one of the applications after patent is issued, it is proper to reject that application but improper to reject the other application.

Glen W. Jensen, Margie R. Jensen, A-29867 (Feb. 17, 1964)

Lands may not be disposed of under the Desert Land Act if they have already been reclaimed, even though the reclamation was done by the desert land applicant in trespass before filing his application.

David E. Iveson, A-30058 (Mar. 12, 1964)

Even though on appeal an applicant submits adequate information to fulfill the requirements of applicable regulations to support his desert land application, the application will be rejected where it is determined that the land is not suitable for agricultural development because of poor soils and lack of evidence that there is available an adequate supply of water to irrigate all of the irrigable portion of the land sought.

Henry R. Lichtwald, A-29063 (Supp.) (Mar. 23, 1964)

Approval of an application for a desert land entry does not give the entryman a vested right to a patent; the right remains inchoate until he has fully complied with the law entitling him to a patent.

Donald S. Tedford, A-29963 (Mar. 24, 1964)

An application for a desert land entry which has been in a suspended status since 1920 and which should have been rejected pursuant to a directive issued in 1920 because the applicant was unable to show an adequate source of irrigation water is properly rejected where there is no showing that a feasible source of water is available now.

Heirs of Charles E. Payne, A-30100 (Sept. 24, 1964)

DESERT LAND ENTRY--Continued

ASSIGNMENT

A quitclaim deed evidencing the assignment of a **desert land entry** which was acknowledged outsid **the State in which** the land in the entry is located **is properly rejected.**

Fred E. Trowbridge, A-29814 (Feb. 11, 1964)

Where two desert land applicants enter into an executory contract with another person for the development of the lands applied for, payment to be made by the conveyance to the developer of the land applied for in one of the applications after patent is issued, it is proper to reject that application but improper to reject the other application

Glen W. Jensen, Margie R. Jensen, A-29867 (Feb. 17, 1964)

A desert land entryman who obtains a suspension under the act of July 30, 1956, thereby loses his right to assign the entry under the express terms of the act, and it is proper for a land office to revoke its recognition or approval of an attempted assignment of the entry.

Muriel E. Nunnelley et al., A-30074 (Aug. 18, 1964)

CANCELLATION

When a desert land entryman alleges that reclamation of the entry was timely and that his final proof indicating the contrary was in error, he may be afforded an opportunity to file a new final proof.

Nadine K. Jones, Roy L. Jones, A-29762, A-29764 (Jan. 2, 1964)

It is proper to cancel a desert land entry when the final proof shows on its face that no cultivation and irrigation were accomplished on the entry until after expiration of the life of the entry and that no irrigation system existed for conducting water to all irrigable portions of the entry.

Virginia Letitia Ferrin, A-29809 (Feb. 3, 1964)

DESERT LAND ENTRY--Continued

CANCELLATION--Continued

A desert land entry is properly canceled when the entryman admits his inability to reclaim it within the statutory life of the entry or thereafter and such reclamation is not accomplished.

Elizabeth Forshee, A-30080 (Mar. 12, 1964)

It is proper to cancel a desert land entry where the final proof shows on its face that neither cultivation nor reclamation has been accomplished on the entry within the time allowed.

Lillian L. Underwood, A-29892 (Mar. 23, 1964)

A desert land entry is properly canceled when the statutory life of the entry has expired without reclamation and cultivation of the entry, as required under the desert land law, and the entryman fails to show that he is entitled to an extension of time to complete the requirements of the desert land law.

Virgil H. Belisle, A-29954 (Mar. 24, 1964)

It is proper to reject desert land entry final proof which shows on its face that compliance with the requirements of the desert land law for reclamation of the entry has not been effected during the statutory life of the entry.

Maurice J. Matthews and Jean J. Matthews, A-30152 (May 8, 1964)

Where final proof shows on its face that the requirements of the law as to cultivation and reclamation have not been met within the statutory life of the entry, the final proof must be rejected and the entry canceled.

Joe Ann Chatham, Arizona 03514 (Oct. 20, 1964)

DESERT LAND ENTRY--Continued

CLASSIFICATION

An application for desert land entry is properly rejected when it appears that the underground water in the area has been over-appropriated so that an increase in the use of water will further complicate the administration of ground water and be detrimental to presently approved water applications and the land entries to be benefited thereby.

Iona C. Sherwood, A-29205 (Jan. 31, 1964)

Even though on appeal an applicant submits adequate information to fulfill the requirements of applicable regulations to support his desert land application, the application will be rejected where it is determined that the land is not suitable for agricultural development because of poor soils and lack of evidence that there is available an adequate supply of water to irrigate all of the irrigable portion of the land sought.

Henry R. Lichtwald, A-29063 (Supp.) (Mar. 23, 1964)

Desert land applications are properly rejected where it is determined that the public interest would best be served by disposing of the applied for land at public auction.

Beatrice L. Moore, Emma L. Richardson, Idaho 013536, 013537 (Sept. 30, 1964)

A protest by a grazing permittee against the classification of lands as suitable for desert land entry is properly dismissed where the lands are found to be more suitable for agricultural development than for grazing and there appears to be available water for irrigation.

Francis Taylor, A-30282 (Oct. 1, 1964)

A desert land entry application is properly rejected when there is insufficient underground water available for irrigation and the State of Idaho has declared the area a critical water area.

Venice Fairchild et al., A-29802 (Oct. 5, 1964)

DESERT LAND ENTRY--Continued

CLASSIFICATION--Continued

A protest by grazing users against the allowance of a desert land entry will be denied where it appears that the land is suitable for desert land entry, and the allowance of the entry will not seriously interfere with the livestock operations of the protestants.

John H. and Kathryn Hunter, et al., Nevada 045409 (Oct. 7, 1964)

Lands withdrawn by E. O. No. 6910 may be classified under sec. 7 of the Taylor Grazing Act for retention in Federal ownership for use in connection with an existing, experimental range research program rather than for desert land entry; and a desert land application for lands so classified is properly rejected without the necessity of another formal withdrawal of the lands for that specific purpose.

Calvin B. Neeley, A-30235 (Oct. 12, 1964)

A desert land application is properly rejected when, during the course of processing the application, the Department classifies a large area of land, including the tract applied for, as unsuitable for agricultural development.

Frances Sarno, Los Angeles 0104862 (Nov. 16, 1964)

A desert land application is properly rejected where it has been determined that the highest use of the land sought is for future home, business, or industrial sites.

A desert land application for land containing poor or marginal soil is properly rejected.

Opal Glodean Johnson et al., Nevada 058721 etc. (Dec. 2, 1964)

CULTIVATION AND RECLAMATION

When a desert land entryman alleges that reclamation of the entry was timely and that his final proof indicating the contrary was in error, he may be afforded an opportunity to file a new final proof.

Nadine K. Jones, Roy L. Jones, A-29762, A-29764 (Jan. 2, 1964)

DESERT LAND ENTRY--Continued

CULTIVATION AND RECLAMATION--Continued

A desert land entryman will not be allowed an amendment to enlarge the area of his patented entry under regulation 43CFR 104.10 when the new area is desired for purposes of construction of a dwelling and other buildings and not that of reclamation.

Leonard C. Olson, A-29962 (Mar. 3, 1964)

It is proper to reject desert land entry final proof which shows on its face that compliance with the requirements of the desert land law for reclamation of the entry has not been effected during the statutory life of the entry.

Maurice J. Matthews and Jean J. Matthews, A-30152 (May 8, 1964)

Where final proof shows on its face that the requirements of the law as to cultivation and reclamation have not been met within the statutory life of the entry, the final proof must be rejected and the entry canceled.

Joe Ann Chatham, Arizona 03514 (Oct. 20, 1964)

A desert land entryman on lands which are within and which benefit from a reclamation project must comply with the regular requirements of the desert land law as to cultivation and reclamation within the time fixed by that law and in addition must satisfy the requirements of the reclamation law.

Equitable Adjudication is properly denied to a desert land entryman who has neither cultivated nor reclaimed his entry within the time allowed by law.

Clifton O. Myll, A-29920 (Nov. 25, 1964)
71 I.D. 458

EXTENSION OF TIME

After the termination on Mar. 1, 1959, of the suspension of a desert land entry granted under the act of July 30, 1956, the entry is extended only for the remainder of the statutory life of the entry

DESERT LAND ENTRY--Continued

EXTENSION OF TIME--Continued

existing at the time the suspension became effective and not for an additional period equal to the period of the suspension.

Virginia Letitia Ferrin, A-29809 (Feb. 3, 1964)

An extension of time for the submission of final proof of the reclamation and cultivation of a desert land entry is properly rejected under a statute which requires a showing of an unavoidable delay in the construction of irrigation works without fault of the entryman when the reason given by the entryman is that because of illness in his family he was financially unable to obtain a well driller to complete a well which another driller had abandoned because of other commitments and difficulty in obtaining well casing.

Virgil H. Belisle, A-29954 (Mar. 24, 1964)

It is proper to reject applications for extensions of desert land entries where the entrymen do not show that their failure to reclaim the land within the prescribed 4-year period is due, without fault on their part, to unavoidable delay in the construction of irrigating works intended to convey water to the entered lands, the record showing that the primary cause of the delay was their reliance on others to do the necessary work.

John P. Overholser, Patty L. Overholser, A-29992 (June 3, 1964)

The rule announced in John H. Haynes, 40 L.D. 291 (1911), that a homestead entry of lands later proposed to be irrigated under the reclamation law is not bound by the time limitation of the original homestead law does not apply to entries made after June 25, 1910.

The extension granted a desert land entry by section 5 of the act of June 27, 1906, as amended, applies only where the entryman has been hindered, delayed, or prevented from complying with the desert land law by reason of a reclamation withdrawal or irrigation project and the mere fact that an entry is within the exterior limits of such a withdrawal or project does not entitle an entry to the benefits of the statute where no hindrance is shown

Clifton O. Myll, A-29920 (Nov. 25, 1964)
71 L.D. 458

DESERT LAND ENTRY--Continued

LANDS SUBJECT TO

A desert land application for land withdrawn from entry under the act of June 17, 1902, is properly rejected; this would be so even if the land were within the boundaries of an irrigation district and subject to the act of Aug. 11, 1916.

Robert S. Reese, John W. Fleming, A-29876 (Feb. 20, 1964)

Public land included in an existing desert land entry is not available for entry in response to another application and will not be available unless the existing entry is canceled and the cancellation noted on the records of the land office.

Land within a reclamation withdrawal, even though within an irrigation district, and designated under the Smith Act of Aug. 11, 1916, is not subject to desert land entry.

Ina Jean Lang, A-29926 (Feb. 25, 1964)

Lands may not be disposed of under the Desert Land Act if they have already been reclaimed, even though the reclamation was done by the desert land applicant in trespass before filing his application.

David E. Iveson, A-30058 (Mar. 12, 1964)

A desert land entry application is properly rejected when the land applied for is on the date of application included in an outstanding homestead entry.

Robert L. Douglass, A-30204 (Nov. 25, 1964)

PROOF

When a desert land entryman alleges that reclamation of the entry was timely and that his final proof indicating the contrary was in error, he may be afforded an opportunity to file a new final proof.

Nadine K. Jones, Roy L. Jones, A-29762, A-29764 (Jan. 2, 1964)

DESERT LAND ENTRY--Continued

PROOF--Continued

It is proper to reject desert land entry final proof which shows on its face that compliance with the requirements of the desert land law for reclamation of the entry has not been effected during the statutory life of the entry.

Maurice J. Matthews and Jean J. Matthews, A-30152 (May 8, 1964)

Where a desert land entryman makes application to purchase the land in his entry pursuant to the last paragraph of sec. 5 of the Act of Mar. 4, 1915 (43 U.S.C. 338), which application previously has been approved, it is improper to suspend the entry under the ruling made in the Maggie L. Havens decision of Oct. 11, 1923, and the entryman or his heirs will be allowed to perfect his entry under the 1915 act by submitting final proof in accordance therewith.

Heirs of Frank Hoogner, Los Angeles 038258 (Oct. 16, 1964)

Since there has been no prior determination of how long after water becomes available a desert land entryman has to comply with the requirements of the law for an entry suspended under the Maggie L. Havens case, a determination of the time limit in the first case considering the problem cannot be considered as a retroactive application of the time limit to him.

The period available to a desert land entryman of an entry suspended under the Maggie L. Havens decision to comply with the requirements of the desert land law after notice of the availability of water is given him is two years or the time left in the entry at the time of suspension of the entry, whichever is longer.

Clifton O. Myll, A-29920 (Nov. 25, 1964)
71 I. D. 458

The dictum in the Department's decision of November 25, 1964, in the case of Clifton O. Myll, 71 I. D. 458 (A-29920), that, where the suspension of a desert land entry under the Maggie L. Havens decision terminates because water becomes available, the entryman is entitled to a period of two years in which to fulfill the requirements of the desert land law, if less than two years remained in the life of his entry at the time of the suspension, is withdrawn.

Clifton O. Myll, A-29920 (Supp.) (Dec. 11, 1964)
71 I. D. 486

DESERT LAND ENTRY--Continued

WATER RIGHT

Under departmental regulations (May 31, 1910, 38 L.D. 646, para. 78; currently, 43 CFR 230.110), a desert land entryman who owns a water right can rely on his own efforts to convey his water to his entry without assistance from a government project, thereby avoiding the requirements of the reclamation law, or he can participate in the project. In the latter case he must observe requirements of the reclamation law, including land limitations.

Applicability of the Excess Land Laws Imperial Irrigation District Lands, M-36675 (Dec. 31, 1964) 71 I.D. 496

ENLARGED HOMESTEADS

CANCELLATION

Where an entryman fails to establish residence on his enlarged homestead entry within 12 months from the allowance of his entry, the entry must be canceled.

Trudie M. Ingram, A-29924 (Feb. 20, 1964)

It is proper to reject final proof and cancel an enlarged homestead entry of one claiming to be a World War I disabled veteran with seven months service where final proof is not filed until after the beginning of the fourth entry year and no cultivation at all has been performed on the entry.

Robert B. Marshall, A-30002 (Mar. 24, 1964)

CULTIVATION

It is proper to reject final proof and cancel an enlarged homestead entry of one claiming to be a World War I disabled veteran with seven months service where final proof is not filed until after the beginning of the fourth entry year and no cultivation at all has been performed on the entry.

ENLARGED HOMESTEADS--Continued

CULTIVATION--Continued

An entryman who has not cultivated his entry at all into the fourth year of the entry is not entitled to any reduction in the area required to be cultivated on the ground that he was ill where there is no showing that the illness existed during all the time in which cultivation was required.

Robert B. Marshall, A-30002 (Mar. 24, 1964)

PROOF

It is proper to reject final proof and cancel an enlarged homestead entry of one claiming to be a World War I disabled veteran with seven months service where final proof is not filed until after the beginning of the fourth entry year and no cultivation at all has been performed on the entry.

Robert B. Marshall, A-30002 (Mar. 24, 1964)

EQUITABLE ADJUDICATION

The Department denies equitable adjudication to desert land final proof when substantial compliance with the law has not been shown and no showing has been made that the compliance accomplished was defective only because of ignorance, mistake, or obstacle over which the entryman had no control.

Virginia Letitia Ferrin, A-29809 (Feb. 3, 1964)

Equitable adjudication is properly denied a desert land entryman who submits no final proof, admits his inability to reclaim the entry for lack of water, and submits no evidence of ignorance, mistake, or obstacle over which he had no control which has prevented complete compliance with the requirements of the desert land law.

Elizabeth Forshee, A-30080 (Mar. 12, 1964)

EQUITABLE ADJUDICATION--Continued

An entry is not entitled to equitable adjudication where the area cultivated is at most 1/3 of that required, an outstanding approved Indian allotment exists as an adverse claim to about 1/3 of the entry, and there was no obstacle to the cultivation of the remaining part of the entry.

Olive H. Harrington, A-30133 (May 5, 1964)

Where the explanation given for the failure to comply with the requirements of the desert land law within the statutory life of the entry is inadequate, a patent for the entry may not be granted under the principles of equitable adjudication.

Joe Ann Chatham, Arizona 03514 (Oct. 20, 1964)

If the period for filing final proof on a reclamation homestead entry has expired, there is no authority for granting an extension of time to permit the entryman to build a habitable house upon the entry as required for making satisfactory final proof; nor is the entryman's failure to obtain a loan to build the house because of a private contest initiated against the claim a sufficient basis for invoking equitable adjudication, since his efforts were only attempts at compliance with the homestead requirements and cannot be considered as "substantially" complying with the law, as required before equitable adjudication may be granted.

James E. Walter, A-30120 (Nov. 20, 1964)

Equitable adjudication is properly denied to a desert land entryman who has neither cultivated nor reclaimed his entry within the time allowed by law.

Clifton O. Myll, A-29920 (Nov. 25, 1964)
71 I. D. 458

EXCHANGES OF LAND

FOREST EXCHANGES

An application for a private exchange under the Taylor Grazing Act, which is to be rejected, will not be transferred to the Department of Agriculture for consideration as an application for a forest exchange under the act of Mar. 20, 1922, as amended, where the selected lands are not within the boundaries of a national forest since the 1922 act does not apply to such exchanges.

Chris H. Gansberg, Executor of the Fred Gansberg Estate, A-29830 (Jan. 30, 1964)

FEDERAL OFFICERS AND EMPLOYEES

GENERALLY

Employees of the Department appointed, employed, or assigned before May 19, 1959 under subsection (c) of section 527 of the Mutual Security Act of 1954, 68 Stat. 857 to perform functions outside the continental limits of the United States, upon termination of such appointment, employment, or assignment, are entitled to the benefits provided by section 528 of the Foreign Service Act of 1946, as amended, 22 U.S.C., sec. 928 (Supp. IV, 1959-62).

Employees of the Department appointed, employed, or assigned after May 19, 1959 under subsection (c) of section 527 of the Mutual Security Act of 1954, 68 Stat. 857 or subsection (d) of the section (d) of section 625 of the Act for International Development of 1961, 22 U.S.C., sec. 2385(d) (Supp. IV, 1959-62) to perform functions outside the continental limits of the United States, are not entitled to the benefits provided by section 528 of the Foreign Service Act of 1946, as amended, 22 U.S.C., sec. 928 (Supp. VI, 1959-62) in cases in which their service under the appointment, employment, or assignment exceeds thirty months unless otherwise agreed to by the Department.

Reemployment Rights of James L. Darnell, M-36668 (July 2, 1964)

FEDERAL EMPLOYEES AND OFFICERS --Continued

AUTHORITY TO BIND GOVERNMENT

The United States is not bound or estopped by statements or acts of its officers or agents which are not authorized by law.

Donald S. Tedford, A-29963 (Mar. 24, 1964)

The Government is not barred by any principle of estoppel, abandonment, or laches to declare mining claims null and void because of the claimant's default in answering charges against the claims merely because some nine years have elapsed after the notice of the charges was served on an attorney then representing the claimant, where it appears that the claimant was aware of the contest proceeding but did not take any action in response to the charges.

Grace E. Hutchins, A-29297 (Supp. II), (May 25, 1964)

Reliance on information or advice furnished by an employee of a land office will not confer any right or interest that is not provided by law.

Robert K. Foster et al., A-29857 (June 15, 1964)

The authority of the United States to proceed with the determination of the validity of a mining claim is not vitiated by a long delay between the initiation of the contest and the hearing on the ground that the further processing of the contest is barred by estoppel or laches because Government property is not to be disposed of contrary to law on account of the acquiescence, laches, or failure to act of its officers or agents.

United States v. Julius S. Foster and Minerals Engineering Company, A-29994 (June 24, 1964)

Reliance on information or advice furnished by an employee of a land office will not confer upon an applicant any right or interest that is not provided by law.

Cecil W. Hinshaw, A-30006 (July 23, 1964)

The United States cannot be bound by the unauthorized act of a land office in approving an assignment of a desert land entry by an entryman who has been deprived of his right to assign by a specific act of Congress.

Muriel E. Nunnelley et al., A-30074 (Aug. 18, 1964)

FEDERAL EMPLOYEES AND OFFICERS--Continued

AUTHORITY TO BIND GOVERNMENT--Continued

The Department is not bound or estopped by erroneous advice given by personnel of the Bureau of Land Management.

Charles M. Slocum, A-30188 (Oct. 1, 1964)

Neither unauthorized acts by employees of the Bureau of Land Management nor erroneous information furnished by themcan serve as the basis for conferring rights not authorized by law or for excusing the nonperformance of acts that are required by law to be performed before the vesting of a right.

Jess H. Nicholas, Jr., A-30065 (Oct. 13, 1964)

GRAZING AND GRAZING LANDS

Although a range area may have been grazed for years during summer months and summer grazing is convenient for certain range users, a restriction on the use of the range for grazing during the summer months made by the district manager in an attempt to improve the condition of the range will be sustained where the range users do not satisfactorily show that his action is arbitrary or capricious in changing the season of use.

Reuben Meeks et al., A-30316 (Sept. 10, 1964)

RAZING LEASES

APPORTIONMENT OF LAND

A division of lands for leasing purposes among preference-right applicants on an equal plane of preference will not be disturbed where a review of all the factors involved indicates that the division is equitable.

Abraham Lorenz, A-29918 (May 25, 1964)

PREFERENCE RIGHT APPLICANTS

As between conflicting applicants for a section 15 lease, if only one of the applicants owns adjoining land, an award must be made to him if he needs the public land for proper use of his contiguous land even though the applicant who does not own contiguous land may have a greater need for the public land.

In order to be entitled to a preference right to a grazing lease under section 15 of the Taylor Grazing Act, one need not be engaged in the livestock business exclusively or derive his principal source of income from raising livestock.

E. W. Davis, A-29889 (Mar. 25, 1964)

A division of lands for leasing purposes among preference-right applicants on an equal plane of preference will not be disturbed where a review of all the factors involved indicates that the division is equitable.

Abraham Lorenz, A-29918 (May 25, 1964)

GRAZING PERMITS AND LICENSES

GENERALLY

A grazing license or permit issued under the Taylor Grazing Act is not a contract with the United States, and it does not confer upon the licensee or permittee any vested right to the continued use of the land covered by the license or permit.

GRAZING PERMITS AND LICENSES--Continued

GENERALLY--Continued

A protest by a grazing licensee against allowance of an application for a mineral patent is properly rejected where the protest merely makes general uncorroborated assertions that the mining claim is invalid for lack of discovery and that the land is more suitable for grazing and other nonmineral uses.

Dr. and Mrs. A. J. Kafka, A-29807 (Feb. 3, 1964)

Although a range area may have been grazed for years during summer months and summer grazing is convenient for certain range users, a restriction on the use of the range for grazing during the summer months made by the district manager in an attempt to improve the condition of the range will be sustained where the range users do not satisfactorily show that his action is arbitrary or capricious in changing the season of use.

Reuben Meeks et al., A-30316 (Sept. 10, 1964)

Where after an appeal to the Secretary involving questions as to the extent and apportionment of grazing privileges within a unit in a grazing district, a written agreement purporting to resolve such questions is made by the range users and concurred in by the Bureau of Land Management, which recommends its approval, and it appears that the agreement is fair and in substantial compliance with the Federal Range Code for Grazing Districts, the agreement will be approved and the case will be remanded to the Bureau for adjudication and administration of the range in accordance with the agreement.

Orlo G. Bailey, et al., A-29671 (Nov. 23, 1964)

ADJUDICATION

Where after an appeal to the Secretary involving questions as to the extent and apportionment of grazing privileges within a unit in a grazing district, a written agreement purporting to resolve such questions is made by the range users and concurred in by the Bureau of Land Management, which recommends its approval, and it appears that the agreement is fair and in substantial compliance with the Federal Range Code for Grazing Districts, the

GRAZING PERMITS AND LICENSES--Continued

ADJUDICATION--Continued

agreement will be approved and the case will be remanded to the Bureau for adjudication and administration of the range in accordance with the agreement.

Orlo G. Bailey, et al., A-29671 (Nov. 23, 1964)

APPEALS

An appeal to the Director of the Bureau of Land Management from a hearing examiner's decision is properly dismissed when the notice of appeal is not filed with the hearing examiner within the 10-day period provided by the Federal Range Code.

Leon D. Robinson et al., A-30230 (Feb. 28, 1964)

An appeal to the Director of the Bureau of Land Management from a hearing examiner's decision in a grazing case is properly dismissed where the appeal was not prepared and filed with the Director until after expiration of the 30-day period in which the appeal was required to be filed.

J. R. Broadbent, A-30320 (Aug. 6, 1964)

Action by a district manager in designating allotments within a unit in a grazing district, reducing the grazing privileges on an equal basis in one of the allotments, and proposing to construct a fence within the unit to prevent livestock trespassing, which has been affirmed after a hearing by a hearing examiner and on appeal to the Director of the Bureau of Land Management, will not be disturbed on appeal to the Secretary, where the action is reasonable and supportable by the record; and the grazing users-appellants' request for an oral argument is denied since the decision must be based upon the record made at the hearing and it appears that there would be no purpose for which an oral argument could serve without requiring a new hearing in the case.

David C. Bagley et al., A-30138 (Dec. 29, 1964)

GRAZING PERMITS AND LICENSES--Continued

APPORTIONMENT OF FEDERAL RANGE

Where after an appeal to the Secretary involving questions as to the extent and apportionment of grazing privileges within a unit in a grazing district, a written agreement purporting to resolve such questions is made by the range users and concurred in by the Bureau of Land Management, which recommends its approval, and it appears that the agreement is fair and in substantial compliance with the Federal Range Code for Grazing Districts, the agreement will be approved and the case will be remanded to the Bureau for adjudication and administration of the range in accordance with the agreement.

Orlo G. Bailey, et al., A-29671 (Nov. 23, 1964)

Action by a district manager in designating allotments within a unit in a grazing district, reducing the grazing privileges on an equal basis in one of the allotments, and proposing to construct a fence within the unit to prevent livestock trespassing, which has been affirmed after a hearing by a hearing examiner and on appeal to the Director of the Bureau of Land Management, will not be disturbed on appeal to the Secretary, where the action is reasonable and supportable by the record; and the grazing users-appellants' request for an oral argument is denied since the decision must be based upon the record made at the hearing and it appears that there would be no purpose for which an oral argument could serve without requiring a new hearing in the case.

David C. Bagley et al., A-30138 (Dec. 29, 1964)

BASE PROPERTY (LAND)

Dependency by Use

Where an application for grazing privileges in Montana Grazing District No. 1 has been rejected on the ground that the applicant did not comply with the requirements of a special rule adopted for that district and the applicant contends that he is entitled to the privileges that he had prior to adoption of the rule in accordance with the court decision in McNeil v. Udall, the case will be remanded for determination of the applicant's privileges in accordance with that decision.

Stanley Garthofner, A-29558 (Jan. 10, 1964)

RAZING PERMITS AND LICENSES--Continued

CANCELLATION AND REDUCTIONS

When the evidence presented before a hearing examiner, in a hearing held to determine whether violations of the Federal Range Code have occurred because of an alleged grazing of cattle on the Federal range beyond the time period permitted by the license of the party, does not support the Government's allegations of willful trespass or valuation of forage consumed, it is improper to penalize the licensee by ordering reductions in future licenses to be issued to him and the case will be remanded for further action to assess damages for the trespass committed, after reconsidering the extent of the trespass and the valuation of the forage consumed.

Alvie E. Holyoak, A-29805 (Jan. 23, 1964)

A refusal to issue any license for Federal range use greater than 75 percent of the Class I qualifications of an appellant's base property for a period of two years is properly made upon a determination that the appellant has willfully grazed more sheep on the Federal range than authorized by his license where he has a long history of past violations.

L. W. Roberts, A-29860 (Apr. 23, 1964)

Action by a district manager in designating allotments within a unit in a grazing district, reducing the grazing privileges on an equal basis in one of the allotments, and proposing to construct a fence within the unit to prevent livestock trespassing, which has been affirmed after a hearing by a hearing examiner and on appeal to the Director of the Bureau of Land Management, will not be disturbed on appeal to the Secretary, where the action is reasonable and supportable by the record; and the grazing users-appellants' request for an oral argument is denied since the decision must be based upon the record made at the hearing and it appears that there would be no purpose for which an oral argument could serve without requiring a new hearing in the case.

David C. Bagley et al., A-30138 (Dec. 29, 1964)

EDERAL RANGE CODE

An appeal to the Director of the Bureau of Land Management from a hearing examiner's decision

GRAZING PERMITS AND LICENSES--Continued

FEDERAL RANGE CODE--Continued

is properly dismissed when the notice of appeal is not filed with the hearing examiner within the 10-day period provided by the Federal Range Code.

Leon D. Robinson et al., A-30230 (Feb. 28, 1964)

SPECIAL DISTRICT RULES

Where an application for grazing privileges in Montana Grazing District No. 1 has been rejected on the ground that the applicant did not comply with the requirements of a special rule adopted for that district and the applicant contends that he is entitled to the privileges that he had prior to adoption of the rule in accordance with the court decision in McNeil v. Udall, the case will be remanded for determination of the applicant's privileges in accordance with that decision.

Stanley Garthofner, A-29558 (Jan. 10, 1964)

HOMESTEADS (ORDINARY)

GENERALLY

The statutory life of a settlement claim in Alaska begins from the date of settlement.

Thomas Foster, A-30083 (June 15, 1964)

If the period for filing final proof on a reclamation homestead entry has expired, there is no authority for granting an extension of time to permit the entryman to build a habitable house upon the entry as required for making satisfactory final proof; nor is the entryman's failure to obtain a loan to build the house because of a private contest initiated against the claim a sufficient basis for invoking equitable adjudication, since his efforts were only

HOMESTEADS (ORDINARY)--Continued

GENERALLY--Continued

attempts at compliance with the homestead requirements and cannot be considered as "substantially" complying with the law, as required before equitable adjudication may be granted.

James E. Walter, A-30120 (Nov. 20, 1964)

Where the fees paid with the filing of an application for homestead entry remain in the land office after the withdrawal of the application and the applicant files a second application and is informed that the fees already paid will be transferred to the second application but the administrative action to accomplish this is not taken until after an intervening application has been filed, the second homestead application will be deemed to have been validly filed from the time of its filing.

Joseph Q. Clark, A-30215 (Dec. 22, 1964)

APPLICATIONS

An application for a homestead entry is properly rejected where, although the land applied for was previously classified as suitable for agricultural development by reclamation, later assessment of the water situation shows that the annual recharge of the underground water basin is insufficient for private lands and existing agricultural classifications.

Lyle Kenneth Gross, A-29783 (Feb. 19, 1964)

Where land applied for in a homestead application is embraced in a first form reclamation withdrawal, the application is properly rejected.

Gene W. Reed, A-30084 (Mar. 12, 1964)

The filing of an allowable homestead application in Alaska constitutes an entry within the meaning of the act of September 5, 1914, so that an individual who has filed an allowable homestead application in Alaska but withdrawn it prior to allowance by the land office has exercised his right of entry under the homestead law and is properly required to make the necessary showing for a second homestead entry under the 1914 act in connection with any subsequent homestead application.

HOMESTEADS (ORDINARY)--Continued

APPLICATIONS--Continued

An amendment of a departmental regulation to provide expressly for the first time that the showing required for making a second homestead entry must be made in cases where a homestead application has been filed but withdrawn prior to allowance will not be applied where the first application was filed and withdrawn prior to the effective date of the amendment, particularly where the practice of the land office has been not to require the showing.

The filing of concurrent homestead applications by an individual bars the allowance of either so long as both applications remain of record and, while the withdrawal of one will permit the allowance of the other, such allowance will be subject to otherwise intervening rights that have been asserted prior to the withdrawal of the first application.

Raymond L. Gunderson, A-30134 (Dec. 2, 1964)
71 I.D. 477

CANCELLATION OF ENTRY

Failure to establish residence within a maximum period of twelve months from the date of allowance of entry, or during an additional statutory suspension of residence, cultivation and improvement requirements, and failure after establishment of residence to reside on the entry at least 7 months in each year in which residence is required must result in cancellation of the entry.

Daniel A. Quintana, A-29903 (Feb. 20, 1964)

A homestead final proof is properly rejected and the entry canceled when the final proof shows on its face that the cultivation requirements have not been met because there has been no cultivation at all during the third year of the entry and only clearing of the land, without sowing of a crop, during the second year.

George F. Wunsch, A-30001 (Mar. 11, 1964)

Where a homestead entry is canceled as a consequence of a private contest and the contestant is notified of his preference right to make an entry, but cancellation of the entry is noted in the serial register and not on the official status plat and in the historical index, an application to enter the land, whether filed by the

contestant or another, is premature and must be rejected; however, the contestant is entitled to notice after the cancellation is properly noted and an opportunity to file an application for entry within 30 days thereafter.

Carl R. Hawkins, A-29773 (Mar. 24, 1964)

Where a homestead entry is allowed in an arid area on the basis that irrigation will be necessary for proper cultivation of the land and final proof is submitted stating that the entryman cultivated the required acreage during the second and third entry years, it is error to reject the final proof and cancel the entry without bringing adverse proceedings merely because the final proof states that an irrigation well was not completed until after the cultivation was completed.

A homestead entry is not to be canceled for defects not appearing on the face of the record without giving the entryman an opportunity to be heard.

Edgar A. Alder, A-30077 (Apr. 6, 1964)

Where homestead final proof on its face shows that the entryman did not comply with the cultivation requirements of the homestead laws, it is properly rejected and the entry canceled.

Clarence A. Beichner, A-30051 (Apr. 10, 1964)

Where homestead final proof shows on its face that the cultivation requirements have not been met, the proof is properly rejected and the entry canceled.

Olive H. Harrington, A-30133 (May 5, 1964)

A homestead final proof is properly rejected and the entry canceled when the final proof shows on its face that the entryman has failed to cultivate 1/8 of the area of the entry during any year of the life of the entry.

Thomas G. Simmons, Jr., A-30076 (June 3, 1964)

Final proof on a homestead entry is properly rejected and the entry properly canceled where the entryman has not shown that he established residence on the land within the time required by the homestead law.

Clifton V. Dayley, A-29942 (Sept. 9, 1964)

A homestead entry must be canceled where the entryman has failed to establish residence on the entry and to cultivate the required area of the homestead entry during the third and fourth entry years.

Norman LeRoy Newbold, Utah 018481 (Oct. 12, 1964)

A mere pretense of cultivation does not satisfy the requirements of the homestead law, and final proof which fails to show bona fide compliance with the cultivation requirements of the law is properly rejected and the entry canceled.

Jess H. Nicholas, Jr., A-30065 (Oct. 13, 1964)

Where the rainfall in an arid area is inadequate to produce a crop and where the entryman fails to produce a profitable result because his cultivation processes did not include the application of additional water to the soil, the cultivation requirements of the homestead law have not been satisfied and the entry is properly canceled.

Bruce W. Morring, A-30161 (Nov. 4, 1964)

Under the homestead laws, acceptable final proof must show that there is a habitable house upon the entered lands; thus, when the proof shows that there is not a habitable house, the proof must be rejected and the entry canceled if the time for filing final proof has expired.

James E. Walter, A-30120 (Nov. 20, 1964)

Where homestead final proof on its face shows that the entryman did not comply with the cultivation requirements of the homestead laws, it is properly rejected and the entry canceled.

William F. Musgrove, A-30115 (Nov. 23, 1964)

HOMESTEADS (ORDINARY)--Continued

CANCELLATION OF ENTRY--Continued

Where a homestead entry is canceled by a land office upon the basis of a report of field examination and final proof has not yet been filed, it is improper to sustain the cancellation merely because in his appeal from the cancellation the entryman makes a statement which is subject to interpretation as an admission of noncompliance with the homestead law.

Robert L. Douglass, A-30204 (Nov. 25, 1964)

CLASSIFICATION

An application for a homestead entry is properly rejected where, although the land applied for was previously classified as suitable for agricultural development by reclamation, later assessment of the water situation shows that the annual recharge of the underground water basin is insufficient for private lands and existing agricultural classifications.

Lyle Kenneth Gross, A-29783 (Feb. 19, 1964)

An application for a homestead entry is properly rejected where it appears that the land is too steep, rough, and rocky to be considered for agricultural use, and where, even if some agricultural production would be possible, it would be on such a small scale as to be economically unfeasible to develop the land for agricultural use.

James R. Steere, A-30073 (June 1, 1964)

A homestead application is properly rejected where it has been determined that the highest use of the land sought is for future home, business, or industrial sites.

A homestead application for land containing poor or marginal soil is properly rejected.

Opal Glodean Johnson et al., Nevada 058721 etc. (Dec. 2, 1964)

COMMUTATION

Commuted homestead final proof under a settlement claim in Alaska submitted during the third entry year by a homesteader, who is not entitled to credit for military service, is not acceptable where it does not show that 1/8 of the area of the claim had been cultivated.

Thomas Foster, A-30083 (June 15, 1964)

HOMESTEADS (ORDINARY)--Continued

COMMUTATION--Continued

CONTESTS

A contest complaint filed against a homestead entry which merely alleges that the entryman has apparently abandoned the land and that there are no improvements on the land is properly dismissed where the life of the entry had not expired at the time the complaint was filed.

James W. Shumaker v. Robert J. Scott, A-29977 (Feb. 20, 1964)

Where a homestead entry is canceled as a consequence of a private contest and the contestant is notified of his preference right to make an entry, but cancellation of the entry is noted only in the serial register and not on the official status plat and in the historical index, an application to enter the land, whether filed by the contestant or another, is premature and must be rejected; however, the contestant is entitled to notice after the cancellation is properly noted and an opportunity to file an application for entry within 30 days thereafter.

Carl R. Hawkins, A-29773 (Mar. 24, 1964)

It is not necessary that the charges of a homestead **contest be sustained** by the contestant's evidence **if the contestee** submits evidence that is suitable **for this purpose.**

Stanley W. Hutchison v. Clyde Bishop, A-29693 **(May 4, 1964)**

Contest charges against a homestead entry which allege facts reflected in Bureau of Land Management records will be dismissed.

Kenneth M. Crockett v. Mario Ferraro, Fairbanks 023168 (Oct. 12, 1964)

HOMESTEADS (ORDINARY)--Continued

CONTESTS--Continued

It is improper to reject final proof and to cancel a homestead entry without a hearing on the ground that the final proof shows that grain was planted in the coldest months of the winter in Alaska and therefore the attempted cultivation was not performed in good faith where the entryman presents evidence on appeal that his method of winter cultivation is an acceptable practice and he actually cleared the land with a bulldozer equipped with teeth which actually broke the soil to a depth of 12 inches immediately before the sowing of the seed; in such circumstances adverse proceedings against the entry must be initiated by a contest with an opportunity for a hearing.

John A. Bartel, A-29664 (Oct. 11, 1962), distinguished.

George J. Sehm, A-30129 (Nov. 9, 1964)

CULTIVATION

A homestead final proof is properly rejected and the entry canceled when the final proof shows on its face that the cultivation requirements have not been met because there has been no cultivation at all during the third year of the entry and only clearing of the land, without sowing of a crop, **during the second year.**

George F. Wunsch, A-30001 (Mar. 11, 1964)

A homestead entryman who by reason of his military service of more than 19 months is entitled to two years credit toward the cultivation requirements under the homestead law, but who does not submit final proof until after the fifth entry year, is required only to meet the cultivation requirements for any two of the four entry years in which cultivation is ordinarily required.

Where a homestead entry is allowed in an arid area on the basis that irrigation will be necessary for proper cultivation of the land and final proof is submitted stating that the entryman cultivated the required acreage during the second and third entry years, it is error to reject the final proof and cancel the entry without bringing adverse proceedings merely because the final proof states that an irrigation well was not completed until after the cultivation was completed.

Edgar A. Alder, A-30077 (Apr. 6, 1964)

HOMESTEADS (ORDINARY)--Continued

CULTIVATION--Continued

Where homestead final proof on its face shows that the entryman did not comply with the cultivation requirements of homestead laws, it is properly rejected and the entry canceled.

The Department is not justified in reducing the cultivation requirements under the homestead law in Alaska where the occurrence relied upon to justify a reduction, wetness of the area, is not an unforeseeable event as it is shown to have occurred in years prior to a year in which cultivation was required and the same condition did not prevent cultivation in the next succeeding year.

Clarence A. Beichner, A-30051 (Apr. 10, 1964)

Where homestead final proof shows on its face that the cultivation requirements have not been met, the proof is properly rejected and the entry canceled.

Olive H. Harrington, A-30133 (May 5, 1964)

A homestead entryman who by reason of his military service is entitled to more than 19 months' credit toward the cultivation and residence requirements for patent under the homestead law may substitute service credit for any 2 years of cultivation but must cultivate at least one-eighth of the area of the entry whether he elects to file final proof at the end of the first entry year or at the end of the fifth year.

Franklin P. Rambo, A-30068 (May 13, 1964)

A homestead final proof is properly rejected and the entry canceled when the final proof shows on its face that the entryman has failed to cultivate 1/8 of the area of the entry during any year of the life of the entry.

Thomas G. Simmons, Jr., A-30076 (June 3, 1964)

Commuted homestead final proof under a settlement claim in Alaska submitted during the third entry year by a homesteader, who is not entitled to credit for military service, is not acceptable where it does not show that 1/8 of the area of the claim had been cultivated.

Thomas Foster, A-30083 (June 15, 1964)

HOMESTEADS (ORDINARY)--Continued

CULTIVATION--Continued

Where the final proof shows on its face that the entryman did not cultivate the required one-eighth of the entry during the third and fourth entry years, the final proof must be rejected.

Norman LeRoy Newbold, Utah 018481 (Oct. 12, 1964)

The breaking, planting or seeding and tillage for a crop which constitute cultivation of the soil of a homestead entry must include such acts and be done in such manner as to be reasonably calculated to produce profitable results; the planting of perennial grasses does not satisfy this requirement where it appears that the grasses have no use or economic value.

A mere pretense of cultivation does not satisfy the requirements of the homestead law, and final proof which fails to show bona fide compliance with the cultivation requirements of the law is properly rejected and the entry cancelled.

Jess H. Nicholas, Jr., A-30065 (Oct. 13, 1964)

Where the rainfall in an arid area is inadequate to produce a crop and where the entryman fails to produce a profitable result because his cultivation processes did not include the application of additional water to the soil, the cultivation requirements of the homestead law have not been satisfied and the entry is properly canceled.

Bruce W. Morring, A-30161 (Nov. 4, 1964)

It is improper to reject final proof and to cancel a homestead entry without a hearing on the ground that the final proof shows that grain was planted in the coldest months of the winter in Alaska and therefore the attempted cultivation was not performed in good faith where the entryman presents evidence on appeal that his method of winter cultivation is an acceptable practice and he actually cleared the land with a bulldozer equipped with teeth which actually broke the soil to a depth of 12 inches immediately before the sowing of the seed; in such circumstances adverse proceedings against the entry must be initiated by a contest with an opportunity for a hearing.

John A. Bartel, A-29664 (Oct. 11, 1962), distinguished.

George J. Sehm, A-30129 (Nov. 9, 1964)

HOMESTEADS (ORDINARY)--Continued

CULTIVATION--Continued

Where a homestead entryman asserts circumstances which, if established, would justify the reduction of cultivation required during the second entry year, he will be permitted to submit evidence to justify a reduction even though he failed to submit timely notice of his misfortunes following their occurrence.

Thomas G. Simmons, Jr., A-30076 (Supp.) (Nov. 19, 1964)

Where a Government contest is brought against a homestead entry charging failure to cultivate during the second and third years and the contestee answers but does not deny the charges and, in addition, files final proof showing lack of any cultivation on the entry, the allegations of the complaint are properly taken as admitted and the entry canceled.

Frank Allen Foster, A-30117 (Nov. 20, 1964)

Where homestead final proof on its face shows that the entryman did not comply with the cultivation requirements of the homestead laws, it is properly rejected and the entry canceled.

The cultivation requirements of the homestead laws for a given year in which cultivation of 1/8 of the entry is required cannot be met by cultivating less than 1/8 of the entry in that year although the accumulated total of cultivation in that year and prior years comprises 1/8 or more of the entry.

Where an entryman entitled to two years constructive cultivation by reason of military service has cultivated less than the required acreage for the second, third, and fourth years and 1/8 of the entry area in the final entry year, and where factors are asserted which, if established, might justify reduction of the cultivation required during the fourth entry year, or any other year to which his military service credit is not applied, the case will be remanded to permit the entryman to establish that he is entitled to a reduction of cultivation for that year.

William F. Musgrove, A-30115 (Nov. 23, 1964)

FINAL PROOF

A homestead final proof is properly rejected and the entry canceled when the final proof shows on its face that the cultivation requirements have not been met because there has been no cultivation at all during the third year of the entry and only clearing of the land, without sowing of a crop, during the second year.

George F. Wunsch, A-30001 (Mar. 11, 1964)

Where a homestead entry is allowed in an arid area on the basis that irrigation will be necessary for proper cultivation of the land and final proof is submitted stating that the entryman cultivated the required acreage during the second and third entry years, it is error to reject the final proof and cancel the entry without bringing adverse proceedings merely because the final proof states that an irrigation well was not completed until after the cultivation was completed.

A homestead entry is not to be canceled for defects not appearing on the face of the record without giving the entryman an opportunity to be heard.

Edgar A. Alder, A-30077 (Apr. 6, 1964)

Where homestead final proof on its face shows that the entryman did not comply with the cultivation requirements of the homestead laws, it is properly rejected and the entry canceled.

Clarence A. Beichner, A-30051 (Apr. 10, 1964)

Where homestead final proof shows on its face that the cultivation requirements have not been met, the proof is properly rejected and the entry canceled.

Olive H. Harrington, A-30133 (May 5, 1964)

A homestead final proof is properly rejected and the entry canceled when the final proof shows on its face that the entryman has failed to cultivate 1/8 of the area of the entry during any year of the life of the entry.

Thomas G. Simmons, Jr., A-30076 (June 3, 1964)

FINAL PROOF--Continued

Commuted homestead final proof under a settlement claim in Alaska submitted during the third entry year by a homesteader, who is not entitled to credit for military service, is not acceptable where it does not show that 1/8 of the area of the claim had been cultivated.

Thomas Foster, A-30083 (June 15, 1964)

Final proof on a homestead entry is properly rejected and the entry properly canceled where the entryman has not shown that he established residence on the land within the time required by the homestead law.

Clifton V. Dayley, A-29942 (Sept. 9, 1964)

A mere pretense of cultivation does not satisfy the requirements of the homestead law, and final proof which fails to show bona fide compliance with the cultivation requirements of the law is properly rejected and the entry canceled.

Jess H. Nicholas, Jr., A-30065 (Oct. 13, 1964)

Where the rainfall in an arid area is inadequate to produce a crop and where the entryman fails to produce a profitable result because his cultivation processes did not include the application of additional water to the soil, the cultivation requirements of the homestead law have not been satisfied and the entry is properly canceled.

Bruce W. Morring, A-30161 (Nov. 4, 1964)

It is improper to reject final proof and to cancel a homestead entry without a hearing on the ground that the final proof shows that grain was planted in the coldest months of the winter in Alaska and therefore the attempted cultivation was not performed in good faith where the entryman presents evidence on appeal that his method of winter cultivation is an acceptable practice and he actually cleared the land with a bulldozer

HOMESTEADS (ORDINARY--Continued

FINAL PROOF--Continued

equipped with teeth which actually broke the soil to a depth of 12 inches immediately before the sowing of the seed; in such circumstances adverse proceedings against the entry must be initiated by a contest with an opportunity for a hearing.

John A. Bartel, A-29664 (Oct. 11, 1962), distinguished.

George J. Sehm, A-30129 (Nov. 9, 1964)

Under the homestead laws, acceptable final proof must show that there is a habitable house upon the entered lands; thus, when the proof shows that there is not a habitable house, the proof must be rejected and the entry canceled if the time for filing final proof has expired.

If the period for filing final proof on a reclamation homestead entry has expired, there is no authority for granting an extension of time to permit the entryman to build a habitable house upon the entry as required for making satisfactory final proof; nor is the entryman's failure to obtain a loan to build the house because of a private contest initiated against the claim a sufficient basis for invoking equitable adjudication, since his efforts were only attempts at compliance with the homestead requirements and cannot be considered as "substantially" complying with the law, as required before equitable adjudication may be granted.

James E. Walter, A-30120 (Nov. 20, 1964)

Where homestead final proof on its face shows that the entryman did not comply with the cultivation requirements of the homestead laws, it is properly rejected and the entry canceled.

William F. Musgrove, A-30115 (Nov. 23, 1964)

LANDS SUBJECT TO

A homestead application will be rejected when the land applied for is not subject to disposition because it is not publicly owned land, having been washed away by erosion.

Henry E. Schemmel, Harold Eugene Feese, A-29906 (Feb. 20, 1964)

HOMESTEADS (ORDINARY)--Continued

LANDS SUBJECT TO--Continued

Final proof for a homestead initiated by settlement is properly rejected as to land that was within power site classifications at the time when the settlement was made.

Durwood Cotton, C. J. McIntyre, A-29968 (Mar. 11, 1964)

Where land applied for in a homestead application is embraced in a first form reclamation withdrawal, the application is properly rejected.

Gene W. Reed, A-30084 (Mar. 12, 1964)

Where a homestead entry is canceled as a consequence of a private contest and the contestant is notified of his preference right to make an entry, but cancellation of the entry is noted only in the serial register and not on the official status plat and in the historical index, an application to enter the land, whether filed by the contestant or another, is premature and must be rejected; however, the contestant is entitled to notice after the cancellation is properly noted and an opportunity to file an application for entry within 30 days thereafter.

Carl R. Hawkins, A-29773 (Mar. 24, 1964)

An application for homestead entry on land within a national forest is properly rejected.

Lee C. Robinson, A-30196 (Apr. 13, 1964)

An application for homestead entry based upon a settlement claim initiated in 1924 on land then withdrawn for the construction of irrigation works is properly rejected because the land was not open to settlement at the time of the settlement claimed or thereafter.

Sarah Marie Woolf Widow of Glenn Roy Woolf, A-30140 (Oct. 6, 1964)

HOMESTEADS (ORDINARY)--Continued

MILITARY SERVICE

A homestead entryman who by reason of his military service of more than 19 months is entitled to two years credit toward the cultivation requirements under the homestead law, but who does not submit final proof until after the fifth entry year, is required only to meet the cultivation requirements for any two of the four entry years in which cultivation is ordinarily required.

Edgar A. Alder, A-30077 (Apr. 6, 1964)

A homestead entryman who by reason of his military service is entitled to more than 19 months' credit toward the cultivation and residence requirements for patent under the homestead law may substitute service credit for any 2 years of cultivation but must cultivate at least one-eighth of the area of the entry whether he elects to file final proof at the end of the first entry year or at the end of the fifth year.

Franklin P. Rambo, A-30068 (May 13, 1964)

One who seeks to apply his military service toward the residence requirement of the homestead law must show that he established residence on the land within the time required by the homestead law.

Clifton V. Dayley, A-29942 (Sept. 9, 1964)

Where an entryman entitled to two years constructive cultivation by reason of military service has cultivated less than the required acreage for the second, third, and fourth years and 1/8 of the entry area in the final entry year, and where factors are asserted which, if established, might justify reduction of the cultivation required during the fourth entry year, or any other year to which his military service credit is not applied, the case will be remanded to permit the entryman to establish that he is entitled to a reduction of cultivation for that year.

William F. Musgrove, A-30115 (Nov. 23, 1964)

HOMESTEADS (ORDINARY)--Continued

PREFERENCE RIGHTS

Where a homestead entry is canceled as a consequence of a private contest and the contestant is notified of his preference right to make an entry, but cancellation of the entry is noted only in the serial register and not on the official status plat and in the historical index, an application to enter the land, whether filed by the contestant or another, is premature and must be rejected; however, the contestant is entitled to notice after the cancellation is properly noted and an opportunity to file an application for entry within 30 days thereafter.

Carl R. Hawkins, A-29773 (Mar. 24, 1964)

RELINQUISHMENT

A notation written by a homestead entryman on his final proof that "I intend to relinquish the north 40 ac." is not sufficiently definite in its terms to indicate a present intention to relinquish any part of the entry.

A homestead entryman may relinquish a portion of his entry and receive patent to the remaining portion of the entry if he shows that he has met the cultivation requirements on the portion retained and otherwise complied with the homestead law.

Thomas G. Simmons, Jr., A-30076 (Supp.) (Nov. 19, 1964)

RESIDENCE

Failure to establish residence within a maximum period of twelve months from the date of allowance of entry, or during an additional statutory suspension of residence, cultivation and improvement requirements, and failure after establishment of residence to reside on the entry at least 7 months in each year in which residence is required must result in cancellation of the entry.

Daniel A. Quintana, A-29903 (Feb. 20, 1964)

Evidence which shows that at most a homestead entryman spent several nights a week on his entry for seven months of each of three years while he assisted and directed a resident hired man in the development and cultivation of a homestead entry and while he maintained his family in the family

HOMESTEADS (ORDINARY)--Continued

RESIDENCE--Continued

home and supervised and controlled his lumber and building construction businesses 45 miles away, and that the entryman left the entry finally, sold his farm machinery and leased the entry at the conclusion of three years of cultivation supports a contest charge that he failed in the act of establishing residence on the entry coincident with an intent to make the entry his home to the exclusion of a home elsewhere, and the entry should be canceled for failure to establish and maintain residence as required by the homestead law.

Stanley W. Hutchison v. Clyde Bishop, A-29693 (May 4, 1964)

Final proof on a homestead entry is properly rejected and the entry properly canceled where the entryman has not shown that he established residence on the land within the time required by the homestead law.

One who seeks to apply his military service toward the residence requirement of the homestead law must show that he established residence on the land within the time required by the homestead law.

Clifton V. Dayley, A-29942 (Sept. 9, 1964)

Final proof submitted in connection with a homestead entry must be rejected where it shows on its face that the entryman did not establish residence on the entry whatsoever during the statutory life of the entry.

Norman LeRoy Newbold, Utah 018481 (Oct. 12, 1964)

SECOND ENTRY

An application for a second homestead entry under the act of Sept. 5, 1914, can be allowed only if there is a satisfactory showing that the applicant lost, forfeited, or abandoned the original entry through no fault of his own or because of matters beyond his control.

Thomas G. Simmons, Jr., A-30076 (June 3, 1964)

HOMESTEADS (ORDINARY)--Continued

SECOND ENTRY--Continued

An application for a second homestead entry must be rejected where the applicant fails to show that his first entry was lost, forfeited, or abandoned because of matters beyond his control, and whether or not the land involved has been or can be classified as suitable for agricultural entry need not be considered.

Ramon LeMar Newbold, Utah 041333 (Oct. 12, 1964)

The filing of an allowable homestead application in Alaska constitutes an entry within the meaning of the act of September 5, 1914, so that an individual who has filed an allowable homestead application in Alaska but withdrawn it prior to allowance by the land office has exercised his right of entry under the homestead law and is properly required to make the necessary showing for a second homestead entry under the 1914 act in connection with any subsequent homestead application.

An amendment of a departmental regulation to provide expressly for the first time that the showing required for making a second homestead entry must be made in cases where a homestead application has been filed but withdrawn prior to allowance will not be applied where the first application was filed and withdrawn prior to the effective date of the amendment, particularly where the practice of the land office has been not to require the showing.

Raymond L. Gunderson, A-30134 (Dec. 2, 1964) 71 I. D. 477

A person who files an allowable application for homestead entry in Alaska and who withdraws the application before the land office has taken any action to allow it must comply with the act of September 5, 1914, if he thereafter files an application to make another homestead entry; however, he need do so only when his first application was filed after the effective date of the amendment to the departmental regulation expressly stating this rule.

Joseph Q. Clark, A-30215 (Dec. 22, 1964)

HOMESTEADS (ORDINARY)--Continued

SETTLEMENT

A protest against an indemnity school selection is properly dismissed when it is based on the claim that the protestant has settlement rights to the land and he fails to show by any convincing or persuasive evidence that he has such rights.

Query whether one who settles on unsurveyed public land and who later, after the land is surveyed, enters upon and receives a patent to only part of of the land, retains settlement rights as to the remainder of the land.

Claud W. Orr, A-29838 (Supp.) (Mar. 12, 1964)

An application for homestead entry based upon a settlement claim initiated in 1924 on land then withdrawn for the construction of irrigation works is properly rejected because the land was not open to settlement at the time of the settlement claimed or thereafter.

Sarah Marie Woolf Widow of Glenn Roy Woolf, A-30140 (Oct. 6, 1964)

INDIAN ALLOTMENTS ON PUBLIC DOMAIN

GENERALLY

Cases appealed to the Secretary of the Interior from the partial rejection of applications for allotments to native Alaskans under the act of May 17, 1906, as amended, will be remanded to the Bureau of Land Management for further proceedings consistent with the new departmental policy approved by the Secretary on Oct. 25, 1963, with respect to the interpretation of the statutory requirement for substantially continuous use and occupancy by the applicant of the land sought as an allotment.

Carl A. Charles et al., A-29766, A-29841, A-29959, A-30040 (Jan. 10, 1964)

INDIAN ALLOTMENTS ON PUBLIC DOMAIN --Continued

GENERALLY--Continued

While both the Indian Allotment Act of 1887, 24 Stat. 388, and the Alaska Allotment Act, 34 Stat. 197, as amended, 70 Stat. 954, are representative of the method which was used to grant land to "uncivilized" persons in the late nineteenth and early twentieth centuries, the specific requirements of the numerous allotment statutes enacted during that time vary according to the particular situations which they were intended to meet and the two acts should not be read in pari materia to impose identical requirements on applicants under each statute.

Allotment of Land to Alaska Natives, M-36662 (Sept. 21, 1964) 71 I. D.

CLASSIFICATION

An Indian allotment application for nonirrigable grazing land is properly rejected on the ground that the land applied for is not proper for acquisition as an Indian allotment because it contains insufficient forage to comprise an economic grazing unit.

John E. Balmer et al., A-29418 (Feb. 24, 1964) 71 I. D. 66

INDIAN LANDS

ALLOTMENTS

Applications for Indian allotments under sec. 4 of the act of Feb. 8, 1887, as amended, must be rejected where the lands described are withdrawn from all forms of entry under the public land laws.

Louis A. Brant et al., New Mexico 0553627 (Okla.) etc. (Oct. 20, 1964)

INDIAN LANDS--Continued

DESCENT AND DISTRIBUTION

Where an Examiner of Inheritance in his Order Determining Heirs found, on conflicting testimony, that the decedent was not married at the time of his death, the alleged widow's timely-filed petition for a rehearing should have been granted in view of its allegation of her marriage to the decedent which was supported by copies of a marriage certificate.

Estate of Charles Yellow Bird or Steele Deceased Oglala Sioux Allottee No. 7545, IA-1405 (Nov. 6, 1964)

Generally

Where regulations (25 CFR 15.19) provide an appeal to the Secretary of the Interior by a party aggrieved by a decision of the Examiner of Inheritance on a petition for rehearing, an appeal which is based on matters which were not before the Examiner on the petition for rehearing will be dismissed.

Robert Vernie LaBelle, IA-1355 (Mar. 30, 1964) 71 I.D.119

Where there have been conflicting determinations of the heirs of an Indian decedent, all of whom were distantly related, and some of the heirs of a presumptive heir, who died during the probate proceedings, apparently received no notice of the last hearing held to determine the heirs of the original Indian decedent, the case will be remanded to the Examiner of Inheritance for a further hearing.

Estate of Billie Peters (Haup) Spokane Homestead No. 018811, IA-847 (Supp.) (Oct. 27, 1964)

Claims Against Estates

An Examiner's order allowing a States's claim for old-age assistance grants will be modified on appeal to conform with a change in the regulations and policy of the Department.

Estate of Austin Cottonwood, IA-1240 (Jan. 8, 1964)

INDIAN LANDS--Continued

DESCENT AND DISTRIBUTION--Continued

Claims Against Estates - Continued

An Examiner's order allowing a State's claim for oil-age assistance grants will be modified on appeal to conform with a change in the regulations and policy of the Department.

Estate of Benjamin Looking White, Rosebud Sioux Allottee No. 2013, IA-1274 (Mar. 31, 1964)

An unapproved family settlement agreement providing for the division of interests in restricted Indian lands among the Indian heirs of a deceased Indian who devised all of her property to one of them constitutes no claim upon the restricted estate of such devisee upon his subsequent death.

Estate of Elgin Red Elk (Elgin Atetewuhtakewa), Deceased Comanche Unallottee, IA-1230 (Nov. 13, 1964)

Wills

An unapproved alleged contract to make a will devising restricted Indian land is inappropriate for approval and a claim for specific performance thereof against a restricted Indian estate must be denied.

Stella Conger, IA-1292 (Mar. 10, 1964) 71 I.D. 98

Where the sole devisee of restricted Indian property dies prior to the death of the testator, in approving the will under the Act of Feb. 14, 1913, 37 Stat. 678; 25 U.S.C. sec. 373, this Department, unless contrary to the intent of the testator, applies the rule that the devise does not lapse but that the lineal descendants of the devisee take by substitution under the will.

Estate of Frank Simpson Pawnee Allottee No. 645 IA-1270 (Mar. 11, 1964) 71 I.D. 103

INDIAN LANDS--Continued

DESCENT AND DISTRIBUTION--Continued

Wills--Continued

Proof of testamentary capacity of aged and infirmed Osage Indian made by testimony of scrivener and attesting witnesses to his will is not overcome by testimony of others as to his general poor health and condition at the period when his will was executed, nor will undue influence be presumed from visits by relatives with decedent during last illness before execution of will.

Estate of Louis S. Miller Deceased Osage Allottee No. 1719, IA-1196 (Mar. 30, 1964)

Evidence that testator threw his will into a pile of discarded personal papers on the floor in his home a few days before his death from cancer, and then watched his wife gather the papers for burning, does not support a finding that the will, which was subsequently found among the discarded papers, was thereby revoked.

Estate of John H. Rogers, IA-1331 (Apr. 6, 1964)

An aged and infirm Indian who was bedfast and had occasional lapses of memory was competent to make a will when it is established that at such time she had the mental capacity to know in a general way the business in which she was engaged, the act being performed, generally what property she possessed, the natural objects of her bounty and the distribution which she desired to make of her property.

To invalidate a will for undue influence it must be shown that the free will of the testator was destroyed or that the will of another was substituted for that of the testator. Something more than the opportunity for or possibility or suspicion of undue influence is required to be shown in order to void a will for undue influence. Evidence of conduct showing affection, compliance with wishes or requests of testator or even general influence which is not brought to bear on the testamentary act is insufficient to establish undue influence.

Estate of Kau-Ko-E (Belle) Kiowa Allottee No. 1406, IA-1257 (Apr. 17, 1964)

The intent of the testator is the first, basic and fundamental rule in the construction of wills and that intent should be given effect even if it involves the rejection of the literal meaning of particular words or the supplying or omission of words in the testator's will.

INDIAN LANDS--Continued

DESCENT AND DISTRIBUTION--Continued

Wills--Continued

Upon the death of a Yakima Indian woman testate leaving her restricted and trust property to her husband who was not eligible to take the testator's restricted Yakima estate under sec. 7 of the Act of Aug. 9, 1946, 60 Stat. 968, 969, the husband is considered to have predeceased the testatrix, giving effect to the bequests and devises contingent upon the death of the husband before the testatrix, except that the devise to the husband is given effect to the extent of the one-half interest for life in restricted Yakima land that a surviving spouse may take under the cited Act.

Estate of Seebote Howwashmien (Gertrude Burke Haines or Hines), Deceased Yakima Allottee No. 1800, IA-1222 (May 4, 1964)

A petition for rehearing was properly denied for untimeliness under 25 CFR 15.17 by an Examiner of Inheritance when it was mailed by the petitioner's attorney on the last day of the 60-day period provided by the regulation but was not received by the Superintendent until after the expiration date.

Estate of Jack Fighter Fort Peck Allottee No. 1309, IA-1346 (May 26, 1964) 71 I.D.203

Where the record on appeal affirmatively shows that the will of an Osage Indian was properly executed and the testator was competent to make a will and appellant has failed to specify and prove any ground upon which to disapprove the will, the approval of the will by the Acting Superintendent of the Osage Agency will be affirmed.

Estate of Dudley Haskell Allotted Osage Indian, IA-1381 (July 15, 1964)

An Osage Indian testator's chronic alcoholism, indolence, and marital difficulties are insufficient grounds for disapproving his will where the weight of evidence supports a finding that in executing his will he had testamentary capacity, was not unduly influenced, complied with relevant Oklahoma statutes, and made a natural disposition of his property.

Francis Wheeler, IA-1191 (July 24, 1964)

INDIAN LANDS--Continued

DESCENT AND DISTRIBUTION--Continued

Wills--Continued

An unapproved alleged contract to make a will devising restricted Indian land and other property is inappropriate for approval and a request for performance thereof against a restricted Indian estate must be denied.

Estate of Phillip Kahclamat, Yakima Allottee No. 3127, IA-1317 (Oct. 23, 1964)

IRRIGATION

The provisions of law and departmental regulations which govern the size of farm units within the Flathead Irrigation Project permit units which vary in size between 40 and 160 acres, and where an increase in the irrigable area of a farm unit as originally established is necessary to support a family or to carry on an economical family-sized farming operation, this may be accomplished by combining two or more units into a single unit of not more than 160 acres and amending the farm unit plat accordingly.

The irrigation construction charges on farm units and privately held tracts within the Flathead Project have not been paid in full within the meaning of the acreage limitation provision in the Act of Aug. 9, 1912 (37 Stat. 265), since all such charges owing to the United States have not been paid, though none are currently owing. The fact that future construction charges are subject to repayment from power revenues as provided by the Act of May 25, 1948 (62 Stat. 269), does not alter the conclusion that such charges have not been paid in full within the meaning of the acreage limitation provisions of the 1912 Act.

Acreage Limitations on Landholding within the Flathead Irrigation Project, Montana, M-36667 (Oct. 21, 1964)

INDIAN WATER AND POWER RESOURCES

IRRIGATION PROJECTS

The irrigation construction charges on farm units and privately held tracts within the Flathead

IRRIGATION PROJECTS--Continued

Project have not been paid in full within the meaning of the acreage limitation provision in the Act of Aug. 9, 1912 (37 Stat. 265), since all such charges owing to the United States have not been paid, though none are currently owing. The fact that future construction charges are subject to repayment from power revenues as provided by the Act of May 25, 1948 (62 Stat. 269), does not alter the conclusion that such charges have not been paid in full within the meaning of the acreage limitation provisions of the 1912 Act.

Acreage Limitations on Landholding within the Flathead Irrigation Project, Montana, M-36647 (Oct. 21, 1964)

IRRIGATION CLAIMS

GENERALLY

Under the current Public Works Appropriation Act, and its predecessors, awards may be made only upon a finding that the damage was a direct result of nontortious activities of employees of the Bureau of Reclamation.

Each claim must be considered on its own peculiar facts and merits. The payment of any claim does not necessarily assure the payment of another claim on the mere allegation that it is similar or identical.

Claims of Norma Streit, Roger C. Wulf, and Ralph Anderson, T-1100 (Ir.), T-1122 (Ir.), T-1123 (Ir.) (Feb. 4, 1964)

Any claim against the United States which involves Bureau of Reclamation projects and is potentially cognizable under either the Federal Tort Claims Act or the Public Works Appropriation Act must be considered under both acts in order to arrive at a complete administrative disposition in an administrative determination A direct statement should be included in an administrative determination why the claim cannot or should not be considered under both acts when the consideration under either act is omitted.

Claim of Charles H. Reaves, TA-234 (Ir.) (Feb. 17, 1964)

GENERALLY--Continued

The credibility of expert witnesses and the weight of their testimony are matters for the determination by the trier of the facts. The opinions of experts, although on the precise point to be determined, do not relieve the trier of the facts of the authority and corresponding responsibility of forming his own independent opinion based on all the evidence presented.

Claim of Hanover Irrigation District, TA-256 (Ir.) (Feb. 20, 1964)

Under the current Public Works Appropriation Act, and its predecessors, awards may be made only upon a finding that the damage was a direct result of non-tortious activities of employees of the Bureau of Reclamation.

In determining what proof a claimant must supply in support of his claim, due consideration must be given to the availability of the proof to the claimant on the one hand and to the Government on the other. All evidence in the administrative record must be given proper consideration regardless of its source, that is, whether it was presented by the claimant or by the Government.

When the administrative record establishes a prima facie case in favor of the claimant, and there is nothing in the administrative record which adequately rebuts this prima facie case, the claimant is entitled to a determination in his favor.

Claims of Ed Brewer, Myron J. Thompson, Darrell C. Cook, Harold E. Cook, W. J. and Violet Denison, Forrest W. Martin, and Coy Bowen, TA-253 (Ir.) (Mar. 2, 1964) 71 I.D. 84

Under Public Works Appropriation Acts, an award may be made only upon a showing that the damage was the direct result of nontortious activities of employees of the Bureau of Reclamation.

Claim of F. W. Mattson, T-1294-3-64 (Ir.) (Mar. 24, 1964) 71 I.D. 116

Under the current Public Works Appropriation Act, as well as under its predecessors, awards may be made upon a showing that the damage was the direct result of nontortious activities of the Bureau of Reclamation.

The Flood Control Act, 33 U.S.C. 702c, is an immunity statute. Such a statute is necessary, and therefore applicable, only where there would be liability without it.

GENERALLY--Continued

The immunity granted to the United States by 33 U.S.C. 702c does not bar payment of claims under the Public Works Appropriation Act where floods or flood waters are involved because there is no legal liability upon the Government to pay claims under the Public Works Appropriation Act. Therefore, there exists no reason to have recourse to an immunity statute in order to avoid payment of such claims.

The provisions of the Public Works Appropriation Act, concerning the activities of the Bureau of Reclamation, do not vest in anyone a statutory right to compensation. The payment of claims under these provisions is discretionary with, and not mandatory upon, the Secretary of the Interior.

Claim of Bill Powers, TA-271 (Ir.) (June 8, 1964) 71 I.D. 237

Under Public Works Appropriation Acts, an award may be made only upon a finding that the damage was the direct result of nontortious activities of the Bureau of Reclamation personnel.

Claim of Palmer E. Schrag, T-1317-6-64 (July 13, 1964) 71 I.D. 266

DAMAGES

When an award for damage to property is rendered as a result of seepage from an irrigation canal, and that award is based on the permanent depreciation in value of the property due to the seepage, no additional award may be rendered unless the extent or intensity of the seepage has increased since the first award to a degree which has caused further permanent depreciation in value of the property.

Claims of Norma Streit, Roger C. Wulf, and Ralph Anderson, T-1100 (Ir.), T-1122 (Ir.), T-1123 (Ir.) (Feb. 4, 1964)

WATER AND WATER RIGHTS

Generally

In dealing with subterranean water, it is rare that conclusions can be drawn with mathematical precision. Such precision is not necessary. Reasonable and logical conclusions can and must

IRRIGATION CLAIMS--Continued

WATER AND WATER RIGHTS--Continued

Generally--Continued

be drawn from the evidence presented, and a decision will then be rendered consistent with the preponderance of the evidence.

Claims of Ed Brewer, Myron J. Thompson, Darrell C. Cook, Harold E. Cook, W. J. and Violet Denison, Forrest W. Martin, and Coy Bowen, TA-253 (Ir.) (Mar. 2, 1964) 71 I. D. 84

Seepage

When an award for damage to property is rendered as a result of seepage from an irrigation canal, and that award is based on the permanent depreciation in value of the property due to the seepage, no additional award may be rendered unless the extent or intensity of the seepage has increased since the first award to a degree which has caused further permanent depreciation in value of the property.

Claims of Norma Streit, Roger C. Wulf, and Ralph Anderson, T-1100 (Ir.), T-1122 (Ir.), T-1123 (Ir.) (Feb. 4, 1964)

Under Public Works Appropriation Acts, with respect to seepage claims, the liability of the Bureau of Reclamation is limited to water arising from its own irrigation structures. A claim cannot be allowed in the event the damage is caused by private irrigation.

Claim of F. W. Mattson, T-1294-3-64 (Ir.) (Mar. 24, 1964) 71 I. D. 116

MIGRATORY BIRD CONSERVATION ACT

GENERALLY

Section 6 of the Migratory Bird Conservation Act requires approval of title by the Attorney General only when the refuge land is being purchased or rented for a monetary consideration.

Proposed Establishment of a Refuge for Migratory Birds at Grays Lake, Idaho, M-36664 (Supp.) (Aug. 10, 1964) 71 I. D. 311

MIGRATORY BIRD CONSERVATION ACT--Continued

GENERALLY--Continued

MINERAL LANDS

DETERMINATION OF CHARACTER OF

Lands which are reported by the Geological Survey to be prospectively valuable for minerals subject to leasing under the Mineral Leasing Act are not subject to entry or selection under the non-mineral land laws without a mineral reservation to the United States in accordance with the act of July 17, 1914.

State of Arizona, A-28752 (Feb. 13, 1964) 71 I. D. 49

Lands which are reported by the Geological Survey to be prospectively valuable for minerals subject to leasing under the Mineral Leasing Act are not subject to entry or selection under the nonmineral land laws without a mineral reservation to the United States in accordance with the act of July 17, 1914.

State of Arizona, A-27807 (Mar. 24, 1964)

The period for determination by the Department of the Interior whether public land included within the primary limits of a legislative grant in aid of the construction of a railroad which excepts mineral land is mineral in character extends to the time of issuance of patent to the railroad company.

When the Department of the Interior finds that public land within the place limits of a legislative grant in aid of the construction of a railroad is mineral in character and the railroad company challenges such finding, a hearing

MINERAL LANDS--Continued

DETERMINATION OF CHARACTER OF --Continued

should be granted at which the Department has the obligation of making a prima facie case of mineral character whereupon the company has the burden of establishing nonmineral character by a preponderance of the evidence.

To establish the mineral character of railroad grant land it must be shown that known conditions on the critical date are such as reasonably to engender the belief that the land contains mineral of such quality and in such quantity as to render its extraction profitable and justify expenditures to that end.

Southern Pacific Company, A-29736 et al, (May 27, 1964 71 I. D. 224

LEASES

Under a barite lease providing that the Department may, in its discretion, suspend the minimum royalty requirements when production is suspended, the Department will decline to suspend the production and minimum royalty requirements where the lessee has already been granted numerous suspensions and no justification exists for granting continued suspensions.

P. Cobb, A-29769 (May 27, 1964)

A bidder for a coal lease may not modify his bonus bid by decreasing the amount to be paid immediately and extending the time for payment of the balance after the bids have been opened, even though his bid was the only one submitted in response to the published invitation for bids, and he is properly required to pay the full amount of his bid as a condition precedent to issuance of the lease.

Malcolm N. McKinnon, A-29979, A-29996, June 12, 1964

MINERAL RESERVATION

Lands which are reported by the Geological Survey to be prospectively valuable for minerals subject to leasing under the Mineral Leasing Act are not subject to entry or selection under the non-mineral land laws without a mineral reservation to the United States in accordance with the act of July 17, 1914.

Where a State has appealed to the Secretary from a requirement that it file a mineral waiver for

MINERAL LANDS--Continued

MINERAL RESERVATION--Continued

selected school indemnity land reported to be prospectively valuable for oil and gas and the regulation requiring such waiver is amended to eliminate the requirement, the case will be remanded for further processing under the amended regulation.

State of Arizona, A-28752 (Feb. 13, 1964) 71 I. D. 49

Lands which are reported by the Geological Survey to be prospectively valuable for minerals subject to leasing under the Mineral Leasing Act are not subject to entry or selection under the nonmineral land laws without a mineral reservation to the United States in accordance with the act of July 17, 1914.

Where a State has appealed to the Secretary from a requirement that it file a mineral waiver for selected land reported to be prospectively valuable for oil and gas and the regulation requiring such waiver is amended to eliminate the requirement, the case will be remanded for further processing under the amended regulation.

State of Arizona, A-27807 (Mar. 24, 1964)

A desert land entryman who wishes to prevent his entry from being impressed with a reservation of oil and gas to the United States is properly required to file with the land office a petition for reclassification of the land as nonmineral in character when, subsequent to the granting of the desert land application and prior to the submission of final proof, it is determined by the United States that the land is prospectively valuable for oil and gas.

Donald S. Tedford, A-29963 (Mar. 24, 1964)

NONMINERAL ENTRIES

Lands which are reported by the Geological Survey to be prospectively valuable for minerals subject to leasing under the Mineral Leasing Act are not subject to entry or selection under the non-mineral land laws without a mineral reservation to the United States in accordance with the act of July 17, 1914.

MINERAL LANDS--Continued

NONMINERAL ENTRIES--Continued

Where a State has appealed to the Secretary from a requirement that it file a mineral waiver for selected school indemnity land reported to be prospectively valuable for oil and gas and the regulation requiring such waiver is amended to eliminate the requirement, the case will be remanded for further processing under the amended regulation.

State of Arizona, A-28752 (Feb. 13, 1964)
71 I. D. 49

Lands which are reported by the Geological Survey to be prospectively valuable for minerals subject to leasing under the Mineral Leasing Act are not subject to entry or selection under the nonmineral land laws without a mineral reservation to the United States in accordance with the act of July 17, 1914.

Where a State has appealed to the Secretary from a requirement that it file a mineral waiver for selected land reported to be prospectively valuable for oil and gas and the regulation requiring such waiver is amended to eliminate the requirement, the case will be remanded for further processing under the amended regulation.

State of Arizona, A-27807 (Mar. 24, 1964)

Land valuable for gold is not subject to public sale.

Mrs. Marion E. Beresford, A-30015 (Apr. 6, 1964)

PROSPECTING PERMITS

An application for a mineral prospecting permit for acquired lands is properly rejected where the lands applied for are being administered by the Forest Service and that agency objects to approval of the application.

Roy R. Ranson, A-30234 (July 13, 1964)

MINERAL LEASING ACT

GENERALLY

A bidder for a coal lease may not modify his bonus bid by decreasing the amount to be paid immediately and extending the time for payment of the balance after the bids have been opened, even though his bid was the only one submitted in response to the published invitation for bids, and he is properly required to pay the full amount of his bid as a condition precedent to issuance of the lease.

Malcolm N. McKinnon, A-29979, A-29996, June 12, 1964

A temporary withdrawal of oil shale deposits and lands containing such deposits from lease or other disposal for the purposes of investigation, examination, and classification, made by the President under the authority of the act of June 25, 1910, continues in effect until revoked by the President or by act of Congress, and applications for oil shale leases on such withdrawn lands are properly rejected.

Allan E. Mecham et al., A-30244 (Dec. 23, 1964)

LANDS SUBJECT TO

National forest land acquired by the United States under the Forest Exchange Act of Mar. 20, 1922, is properly leased for oil and gas purposes under the Mineral Leasing Act of 1920, as amended, and an offer for such land made pursuant to the Mineral Leasing Act for Acquired Lands is properly rejected.

Neil F. Stull, A-29945 (June 15, 1964)

MINERAL LEASING ACT FOR ACQUIRED LANDS

CONSENT OF AGENCY

An applicant for a noncompetitive oil and gas lease of acquired lands being administered by the

MINERAL LEASING ACT FOR ACQUIRED LANDS
Continued

CONSENT OF AGENCY--Continued

Forest Service is properly required to file written consent to a stipulation imposed by that agency as a condition precedent to issuance of the lease.

Jacob N. Wasserman, A-30275 (Sept. 22, 1964)

LANDS SUBJECT TO

Lands situated within incorporated cities are not subject to oil and gas leasing under the Mineral Leasing Act for Acquired Lands.

Hugo H. Pyes, A-29875 (Feb. 19, 1964)

An offer to lease oil and gas deposits under the Mineral Leasing Act for Acquired Lands is properly rejected where the land applied for is not shown to be acquired land of the United States.

Nicholas D. Olivier, A-30043 (June 3, 1964)

National forest land acquired by the United States under the Forest Exchange Act of Mar. 20, 1922, is properly leased for oil and gas purposes under the Mineral Leasing Act of 1920, as amended, and an offer for such land made pursuant to the Mineral Leasing Act for Acquired Lands is properly rejected.

Neil F. Stull, A-29945 (June 15, 1964)

MINING CLAIMS

GENERALLY

Where after an application for a State exchange is filed it appears that the selected lands are covered by apparently valid mining claims, the State, if it denies the validity of the claims, is

MINING CLAIMS--Continued

GENERALLY--Continued

to be allowed a hearing on the issue of whether or not the claims are valid.

Mansell O. La Fox et al., State of California, A-29030 (May 14, 1964) 71 I.D.199

The authority of the United States to proceed with the determination of the validity of a mining claim is not vitiated by a long delay between the initiation of the contest and the hearing on the ground that the further processing of the contest is barred by estoppel or laches because Government property is not to be disposed of contrary to law on account of the acquiescence, laches, or failure to act of its officers or agents.

United States v. Julius S. Foster and Minerals Engineering Company, A-29994 (June 24, 1964)

COMMON VARIETIES OF MINERALS

Decomposed granitic rock mixed with clay which is easily compacted and therefore suitable for hard-surfacing roadways and other areas subjected to heavy weights is not locatable under the mining laws as an uncommon variety of mineral since its special characteristics do not give it a special distinct value.

A mining claim, the validity of which is challenged under section 3 of the act of July 23, 1955, is properly held to be null and void when the claimant's evidence shows very limited sales and demand for lapidary purposes of the minerals on the claim.

United States v. J. R. Cardwell and Frances H. Smart, A-29819 (Mar. 11, 1964)

Sand and gravel which meet road construction **specifications** without expensive processing and **are especially** well suited for road construction **but which are** used only for the same purposes as other widely available, but less desirable, deposits of sand and gravel are common varieties of sand and gravel and not locatable under the mining laws since these facts do not give them a special, distinct value.

United States v. R. R. Hensler, Sr., et al., **A-29973 (May** 14, 1964)

MINING CLAIMS--Continued

COMMON VARIETIES OF MINERALS--Continued

A deposit of building stone fractured to a large extent into regular rectangular shapes and sizes which are suitable for use in construction without further cutting or splitting and which exist in a greater proportion in the deposit than in other deposits of the same stone in the vicinity is not an uncommon variety of building stone which is locatable under the mining laws because it has a special and distinct value where it appears that the regularly shaped stone is usually, by customer preference, mixed with irregularly shaped stone from the claim in construction usage and that the regularly shaped stone is not shown to have any uses over and above those of deposits of ordinary building stone in the locality.

United States v. Kenneth Mc Clarty, A-29821
(Aug. 27, 1964) 71 I. D. 331

It is proper to declare invalid a mining claim which contains a mixture of two of the minerals withdrawn from mining location by section 3 of the act of July 23, 1955, since the mixture of the two withdrawn minerals does not create a new substance which is not withdrawn.

Where a mining claim contains common varieties of sand and gravel and only slight values of gold and silver, the claim is valid only if the gold or silver is found in such quantity and such quality as to constitute a discovery which is independent of the sand and gravel.

Sand and gravel which may be superior to other deposits of sand and gravel because of hardness, soundness, stability, favorable gradation, nonreactivity and nonhydrophilic qualities, and which can be processed and marketed more advantageously but which are suitable and have been used only for the same purposes as other deposits of sand and gravel in the vicinity are common varieties of minerals and not locatable under the mining laws because the special characteristics shown do not give the materials a special, distinct value.

A mining claim is properly held invalid because the sand and gravel for which it was located are common varieties not subject to location even though such action prevents disposal of small quantities of gold and silver found with the sand and gravel.

United States v. L. N. Basich, A-30017
(Sept. 23, 1964)

MINING CLAIMS--Continued

CONTESTS

Where mining claims having the same name but located on different dates were involved in the same contest proceeding and the claimant stipulated only that one of the claims was to be relinquished and a departmental decision, basing the action taken therein on the stipulations, declares a mining claim of that name to be null and void and does not otherwise identify it, the stipulations must govern and only the claim which the claimant had relinquished shall be considered as having been declared null and void.

Everett M. Baumkirchner et al., A-29812 (Feb. 12, 1964)

When the invalidity of a mining claim is shown by the records of the Bureau of Land Management, a contest proceeding is unnecessary for establishing the invalidity of the claim.

R. W. Hamlett et al., A-30019 (Feb. 27, 1964)

A contest against a mining claim challenging the validity of the claim for lack of a discovery of a valuable mineral deposit is improperly dismissed on the ground that the contestant has made a prima facie case when the uncontroverted evidence shows only the existence of a persistent vein containing gold in quantities too slight to justify development with a reasonable prospect of success in obtaining a paying mine although it would warrant further prospecting.

United States v. Roy Calvin Westmoreland,
A-30178 (Apr. 9, 1964)

The United States is not precluded from initiating a contest against the validity of a mining claim at any time before legal title, as evidenced by patent, has passed to the claimant nor, after proper notice and hearing, declaring the claim null and void on the basis of the evidence submitted at the hearing.

When an applicant for a mineral patent, after proper notice and full opportunity to be heard, **withdraws from a hearing held to determine the validity of his claim without submitting his evidence, it is proper for the hearing examiner to proceed with the hearing and to base his decision on the uncontroverted evidence submitted against the claim.**

United States v. John Olson et al., United States v. Thor W. Paulsen et al., United States v. Patric[illegible] Lemoge Hudelson, A-29953, A-29958, A-29969
(Apr. 13, 1964)

A decision declaring a mining claim null and void is conclusive and will not be reopened and vacated in the absence of a strong legal or equitable basis warranting reconsideration even though the basis for the cancellation has been found, in other proceedings, to be erroneous, where the claimant, who received notice of adverse charges against his claim, fails to answer the charges as required and fails to appeal or otherwise attack the decision declaring his claim invalid and takes no action with respect to the claim for many years.

Union Oil Company of California et al., A-29560 (Apr. 17, 1964) 71 I. D. 169

Where after a hearing held to determine the validity of mining claims both parties submit evidence consisting of assays of samples of ore taken after the hearing and affidavits of mining experts describing the samples or the claims which is pertinent to a resolution of the appeal, the new offerings may not be considered in the disposition of the appeal on its merits but may be examined to determine whether a new hearing is warranted and, if it is, the case is to be remanded to hold one.

United States v. Kenneth O. Watkins and Harold E. L. Barton, A-29862 (Apr. 24, 1964)

Where a contest is brought against a mining claim on the ground of lack of discovery, after the Government has made a prima facie showing that there has not been a discovery, the burden of proof is upon the contestees to show by a preponderance of the evidence that a discovery has been made.

Where a mining claim is located in a national forest the mining claimants are required to show the mineral values they claim by clear and unequivocal evidence.

United States v. Richard C. Porter et al., A-29882 (Apr. 24, 1964)

The fact that a mining claim may at one time have been found to be a valid claim does not estop the Department, under the principle of res judicata, from bringing adverse proceedings against the claim when an application for patent to the claim is filed.

United States v. LaFortuna Uranium Mines, Inc., A-29852 (May 4, 1964)

Where a contest is brought against a mining claim on the ground of lack of discovery of a valuable mineral, the burden of proof is upon the contestee to show by a preponderance of the evidence that a discovery has been made after the Government has made a prima facie showing that there has not been a discovery.

United States v. R. R. Hensler, Sr., et al., A-29973 (May 14, 1964)

Where after an application for a State exchange is filed it appears that the selected lands are covered by apparently valid mining claims, the State, if it denies the validity of the claims, is to be allowed a hearing on the issue of whether or not the claims are valid.

Mansell O. La Fox et al., State of California, A-29030 (May 14, 1964) 71 I. D. 199

Where Bureau of Land Management decisions declaring mining claims to be null and void because of a lack of discovery of valuable minerals have become final because no appeal was ever taken to the Secretary of the Interior, they will not be disturbed in the absence of fraud or gross irregularity upon the request of the mining claimant who alleges procedural and substantive errors involving the earlier proceedings for the first time in an appeal to the Secretary involving other mining claims and it appears there was adequate opportunity for the claimant to raise these issues in the earlier proceedings but failed to do so.

The Government is not barred by any principle of estoppel, abandonment, or laches to declare mining claims null and void because of the claimant's default in answering charges against the claims merely because some nine years have elapsed after the notice of the charges was served on an attorney then representing the claimant, where it appears that the claimant was aware of the contest proceeding but did not take any action in response to the charges.

Grace E. Hutchins, A-29297 (Supp. II), (May 25, 1964)

A mining claimant has the burden of proving in a contest against his claim that a discovery has been made within the limits of the claim.

United States v. Edgecumbe Exploration Company, Inc., A-29908 (May 25, 1964)

MINING CLAIMS--Continued

CONTESTS--Continued

The Secretary of the Interior has clear authority to initiate contest proceedings to determine the validity of a mining claim, even though an application for a patent has not been filed.

United States v. Dr. Raymond F. Oyler, A-29923 (June 15, 1964)

Mineral examiners, employed by the Bureau of Land Management to examine mining claims prior to determining whether or not adverse proceedings should be initiated against the claims, are not clients of the attorneys who may subsequently represent the Government in such proceedings and are not governed by the rules normally applied to attorney-client relationships.

A mining claimant has the burden of proving in a contest against his claim that a discovery has been made after the Government has made a prima facie case that the claim is invalid for want of a discovery of a valuable mineral deposit, and where the land covered by the claim has been withdrawn from all mineral entry, the claimant must show that the discovery preceded the effective date of the withdrawal.

United States v. Julius S. Foster and Minerals Engineering Company, A-29994 (June 24, 1964)

In a contest against a mining claim, the claimant has the burden of proof under the Administrative Procedure Act to establish the validity of his claim.

United States v. Melvin L. Nevitt, A-30030 (July 28, 1964)

In a hearing on a contest challenging the validity of a mining claim on the ground that a discovery has not been made, it is proper to permit the contestant's witnesses, who have been qualified as mining experts and to whose qualification and the line of questioning eliciting the testimony the contestee has not objected, to submit their opinions whether or not a prudent man would be justified in spending time and money with a reasonable chance of success in developing a paying mine on the claim.

United States v. Lewis Reece et al., A-30037 (Oct. 21, 1964)

MINING CLAIMS--Continued

CONTESTS--Continued

The Secretary of the Interior may, acting through the Bureau of Land Management, initiate a contest proceeding to determine the validity of a mining claim even though no application for patent has been filed by the claimant, no other application for the land has been filed, and no withdrawal of the land for classification is being made.

Although the United States may initiate a contest against a mining claim, the mining claimant, who is the contestee, has the burden of showing affirmatively that he has effected compliance with the mining law which entitles him to continued possession of the claim, within the meaning of the Administrative Procedure Act which declares that the proponent of a rule or order shall have the burden of proof.

A mining claimant who participates in a hearing which is a part of contest proceedings that challenge the validity of his claim and in an appeal from a decision of the hearing examiner on the validity of the claim without registering an objection that the standards of fairness and impartiality prescribed by the Administrative Procedure Act have not been observed in the conduct of the hearing is barred from raising that objection in a subsequent appeal to the Secretary of the Interior.

The procedure prescribed by the Interior Department's rules of practice for the initiation, prosecution, and decision of contests against mining claims does not violate the requirements of the Administrative Procedure Act for separation of functions and does not constitute a denial of due process.

In a hearing on a contest challenging the validity of a mining claim on the ground that a discovery has not been made, it is proper to permit the contestant's witnesses, who have been qualified as mining experts and to whose qualification and the line of questioning eliciting the testimony the contestee has not objected, to give their opinions whether or not a prudent man would be justified in spending time and money with a reasonable chance of success in developing a paying mine on the claim.

United States v. Anita E. Spurrier et al., A-29306 (Oct. 21, 1964)

A determination of the invalidity of a mining claim by the manager of a land office is proper in a private contest when the claimant fails to answer within the period allowed by the departmental rules of practice; it is no excuse that the contestee has brought an action in the Federal district court to enjoin the contest proceedings and secured a temporary restraining order when thereafter the restraining order is dissolved and, although the contestee appeals to the

MINING CLAIMS--Continued

CONTESTS--Continued

circuit court, he fails to have the injunction restored or a new one granted.

The Departmental regulation providing that, where a timely answer is not filed in a contest proceeding, the case will be decided on the basis of the allegations in the complaint cannot be waived in the case of a private contest.

Paradise Irrigation District v. James Duguid and Bertha V. Duguid, A-30125 (Nov. 20, 1964)
71 I. D. 442

A determination of the invalidity of a mining claim by the manager of a land office is proper in a Government contest when the claimant fails to answer within the period allowed by the departmental rules of practice; it is no excuse that the contestee has brought an action in the Federal district court to enjoin the contest proceedings and secured a temporary restraining order when thereafter the restraining order is dissolved and, although the contestee appeals to the circuit court, he fails to have the injunction restored or a new one granted.

Where a mining contest was initiated by this Department and the contestees did not file an answer but brought an action to enjoin the proceedings in the Federal courts and secured a temporary restraining order against the proceedings, but failed to obtain a further stay after the district court dissolved the restraining order or otherwise to relieve themselves of the necessity of filing an answer to the contest complaint, the Secretary will nonetheless entertain a petition to have a belated answer accepted where it appears that the litigation was continued in the appellate courts on the assumption of all parties and the courts that the contest proceedings had been held in abeyance and no rights of third parties are affected.

United States v. Humboldt Placer Mining Company and Del de Rosier, A-30055 (Nov. 20, 1964)
71 I. D. 434

Assay reports submitted by a mining claimant after a hearing in a contest against his claims for lack of discovery cannot be considered in determining the contest on the merits but only for the purpose of determining whether a further hearing is warranted, and where the reports are only inferentially pertinent to the issue of discovery a further hearing will not be ordered.

United States v. James E. Hubbart, A-30205 (Nov. 27, 1964)

MINING CLAIMS--Continued

CONTESTS--Continued

Land office decisions declaring mining claims null and void and closing contest proceedings will be vacated, the contest proceedings reinstated, the contestees' answer accepted as timely filed, and further contest proceedings ordered resumed where the contestees file a timely petition requesting such action in accordance with a departmental decision in the proceedings.

United States v. Humboldt Placer Mining Company and Del de Rosier, A-30055 (Supp.) (Dec. 16, 1964)

DETERMINATION OF VALIDITY

A mining claim is a claim to property which may not be declared invalid without proper notice and adequate hearing in accordance with due process of law.

Dr. and Mrs. A. J. Kafka, A-29807 (Feb. 3, 1964)

Where mining claims having the same name but located on different dates were involved in the same contest proceeding and the claimant stipulated only that one of the claims was to be relinquished and a departmental decision, basing the action taken therein on the stipulations, declares a mining claim of that name to be null and void and does not otherwise identify it, the stipulations must govern and only the claim which the claiman had relinquished shall be considered as having been declared null and void.

Everett M. Baumkirchner et al., A-29812 (Feb. 12, 1964)

A mining claim on land open to the operation of the mining laws is a claim to property which may not be declared invalid without proper notice and adequate hearing in accordance with due process of law.

Mrs. Marion E. Beresford, A-30015 (Apr. 6, 1964)

A contest against a mining claim challenging the validity of the claim for lack of a discovery of a valuable mineral deposit is improperly dismissed on the ground that the contestant has not made a prima facie case when the uncontroverted evidence shows only the existence of a persistent vein containing gold in quantities too slight to justify development with a reasonable prospect of

success in obtaining a paying mine although it would warrant further prospecting.

United States v. Roy Calvin Westmoreland, A-30178 (Apr. 9, 1964)

The United States is not precluded from initiating a contest against the validity of a mining claim at any time before legal title, as evidenced by patent, has passed to the claimant nor, after proper notice and hearing, declaring the claim null and void on the basis of the evidence submitted at the hearing.

United States v. John Olson et al., United States v. Thor W. Paulsen et al., United States v. Patricia Lemoge Hudelson, A-29953, A-29958, A-29969 (Apr. 13, 1964)

A decision declaring a mining claim null and void is conclusive and will not be reopened and vacated in the absence of a strong legal or equitable basis warranting reconsideration even though the basis for the cancellation has been found, in other proceedings, to be erroneous, where the claimant, who received notice of adverse charges against his claim, fails to answer the charges as required and fails to appeal or otherwise attack the decision declaring his claim invalid and takes no action with respect to the claim for many years.

Union Oil Company of California et al., A-29560 (Apr. 17, 1964) 71 I. D. 169

Although a mining claim may have been valid in the past because of a discovery on the claim of a valuable deposit of mineral, the mining claim will lose its validity if the mineral deposit ceases to be valuable because of a change in economic conditions.

Mining claims located for manganese must be declared null and void for lack of a discovery where, although manganese was sold from some of the claims and other claims in the vicinity during World War II and the post-war period when a Government buying program was in existence, the evidence shows that since the end of the buying program in 1959 the price of manganese has dropped 50 percent and sales of domestic manganese have ceased and there is no reasonable prospect of a future market, the need for manganese being supplied by higher grade imported manganese.

United States v. Alvis F. Denison et al., A-29884, etc., (Apr. 24, 1964) 71 I. D. 144

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

Where a contest is brought against a mining claim on the ground of lack of discovery, after the Government has made a prima facie showing that there has not been a discovery, the burden of proof is upon the contestees to show by a preponderance of the evidence that a discovery has been made.

United States v. Richard C. Porter et al., A-29882 (Apr. 24, 1964)

Where a contest is brought against a mining claim on the ground of lack of discovery of a valuable mineral, the burden of proof is upon the contestee to show by a preponderance of the evidence that a discovery has been made after the Government has made a prima facie showing that there has not been a discovery.

United States v. R. R. Hensler, Sr., et al., A-29973 (May 14, 1964)

When the Government makes a prima facie case in a contest against a mining claim that there has not been a discovery, the burden of going forth shifts to the claimant to show by a preponderance of the evidence that his claim is valid.

A discovery once made does not validate a mining claim for all time; it must be shown at the time the application for patent is made that the claim is mineral in character and valuable for its mineral content.

United States v. Fred Garula, A-29948 (June 3, 1964)

No hearing is necessary to declare mining claims void ab initio where the records of the Department show that at the time of location of the claims the land was not open to such location.

Robert K. Foster et al., A-29857 (June 15, 1964

The Secretary of the Interior has clear authority to initiate contest proceedings to determine the validity of a mining claim, even though an application for a patent has not been filed.

United States v. Dr. Raymond F. Oyler, A-29923 (June 15, 1964)

DETERMINATION OF VALIDITY--Continued

Where, after the location of a mining claim, land in the claim is classified for disposition under the Small Tract Act and patents are issued under that act with a reservation to the United States of the mineral rights, the Department has no authority to issue a patent to the mining claimant just for the mineral rights when no regulation exists which permits it to do so but this lack of authority does not affect the validity of the mining claim.

The Dredge Corporation, A-29997 (June 15, 1964)

The United States is not estopped from determining the validity of a mining claim because it did nothing to prevent the transfer of the claim from the original locator to others and from the latter to the present holder of the claim or because the United States did not institute a contest against the claim at an earlier date.

United States v. C. M. Keyes et al., A-30098 (Aug. 18, 1964)

The Secretary of the Interior may, acting through the Bureau of Land Management, initiate a contest proceeding to determine the validity of a mining claim even though no application for patent has been filed by the claimant, no other application for the land has been filed, and no withdrawal of the land for classification is being made.

United States v. Anita E. Spurrier et al., A-29306 (Oct. 21, 1964)

To validate a mining claim covering minerals for which a market must be shown, it must appear that the minerals probably exist on the claim in such quantities as will justify extraction.

United States v. E. V. Pressentin and Devisees of the H. S. Martin Estate, A-30004 (Nov. 24, 1964) 71 I. D. 447

DISCOVERY

A contest against a mining claim challenging the validity of the claim for lack of a discovery of a valuable mineral deposit is improperly dismissed on the ground that the contestant has not made a prima facie case when the uncontroverted evidence shows only the existence of a persistent

DISCOVERY--Continued

vein containing gold in quantities too slight to justify development with a reasonable prospect of success in obtaining a paying mine although it would warrant further prospecting.

United States v. Roy Calvin Westmoreland, A-30178 (Apr. 9, 1964)

A decision declaring a mining claim null and void is proper when the record supports the conclusion that there has not been a discovery of a valuable mineral deposit within the meaning of the rule announced in Castle v. Womble, 19 L. D. 455, 457 (1894).

United States v. John Olson et al., United States v. Thor W. Paulsen et al., United States v. Patricia Lemoge Hudelson, A-29953, A-29958, A-29969 (Apr. 13, 1964)

Although a mining claim may have been valid in the past because of a discovery on the claim of a valuable deposit of mineral, the mining claim will lose its validity if the mineral deposit ceases to be valuable because of a change in economic conditions.

Mining claims located for manganese must be declared null and void for lack of a discovery where, although manganese was sold from some of the claims and other claims in the vicinity during World War II and the post-war period when a Government buying program was in existence, the evidence shows that since the end of the buying program in 1959 the price of manganese has dropped 50 percent and sales of domestic manganese have ceased and there is no reasonable prospect of a future market, the need for manganese being supplied by higher grade imported manganese.

United States v. Alvis F. Denison et al., A-29884, etc., (Apr. 24, 1964) 71 I. D. 144

A mining claim is properly declared null and void where the evidence shows that no valuable discovery of mineral, such as would warrant a prudent man in the further expenditure of his labor and means in developing a valuable mine, has been made on the claim. A valid discovery under the mining laws requires more than the finding of mineral indications which would not

MINING CLAIMS--Continued

DISCOVERY--Continued

warrant development work but only further exploratory work to determine if a valuable mineral deposit exists in the claim.

United States v. Richard C. Porter et al., A-29882 (Apr. 24, 1964)

An application for a mineral patent will be rejected and the mining claim declared null and void where, although the claim may formerly have been valuable for minerals, it is not shown as a present fact that the land is mineral in character and is valuable for its mineral content.

United States v. LaFortuna Uranium Mines, Inc., A-29852 (May 4, 1964)

Evidence in administrative record as to value, present demand and marketability of mineral salts obtained from mining claim located within the limits of Rouge River National Forest held insufficient to satisfy the requirements of the mining laws.

United States v. Eleanor A. Gray et al., A-28710 (Supp.) (May 7, 1964)

To constitute a valid discovery upon a lode mining claim there must be a discovery on the claim of a lode or vein bearing mineral which would warrant a prudent man in the expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine; it is not sufficient that there is only a showing which would warrant further exploration in the hope of finding a valuable deposit.

A mining claimant has the burden of proving in a contest against his claim that a discovery has been made within the limits of the claim.

United States v. Edgecumbe Exploration Company, Inc., A-29908 (May 25, 1964)

It is not until minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means with the reasonable prospect of success in developing a valuable mine that the requirement of discovery under the mining laws has been met.

The discovery required by the mining laws means more than a showing only of isolated bits of

MINING CLAIMS--Continued

DISCOVERY--Continued

mineral not connected with or leading to substantial values.

To constitute a valid discovery upon a lode mining claim there must be exposed within the limits of the claim a vein or lode of mineral bearing rock in place possessing a present or prospective value for mining purposes.

When the Government makes a prima facie case in a contest against a mining claim that there has not been a discovery, the burden of going forth shifts to the claimant to show by a preponderance of the evidence that his claim is valid.

A discovery once made does not validate a mining claim for all time; it must be shown at the time the application for patent is made that the claim is mineral in character and valuable for its mineral content.

United States v. Fred Garula, A-29948 (June 3, 1964)

In a contest challenging the validity of his mining claim for lack of a discovery of a valuable mineral deposit, a mining claimant must sustain the validity of the claim by showing a discovery of a valuable mineral which is sufficient to justify a person of ordinary prudence in the further expenditure of labor and means with a reasonable prospect of success in developing a valuable mine.

United States v. Dr. Raymond F. Oyler, A-29923 (June 15, 1964)

It is proper to declare a lode mining claim null and void where the evidence presented in a contest proceeding fails to show the existence of a discovery of a valuable mineral deposit, the evidence merely showing that there is some mineral enrichment of the claim but not in amounts sufficient to justify a man of ordinary prudence to expend further time and money with a reasonable prospect of success in developing a paying mine.

United States v. J. S. Devenny, A-30031 (June 19, 1964)

A mining claimant has the burden of proving in a contest against his claim that a discovery has been made after the Government has made a prima facie case that the claim is invalid for want of a discovery of a valuable mineral deposit, and where the land covered by the claim

has been withdrawn from all mineral entry, the claimant must show that the discovery preceded the effective date of the withdrawal.

United States v. Julius S. Foster and Minerals Engineering Company, A-29994 (June 24, 1964)

It is proper to reject a patent application and declare a lode mining claim null and void where the evidence presented in a contest proceeding fails to show a discovery of a valuable mineral deposit even though such evidence may be sufficient to justify further exploration of the claim.

United States v. Edwin R. Saurers et al., A-30097 (July 9, 1964)

A mining claim is properly held null and void in the absence of evidence showing the discovery of a valuable mineral deposit which would justify a prudent man in the further expenditure of time and money with a reasonable prospect of success in an effort to develop a valuable mine; mere willingness to proceed is insufficient in the absence of justification.

In a contest against a mining claim, the claimant has the burden of proof under the Administrative Procedure Act to establish the validity of his claim.

United States v. Melvin L. Nevitt, A-30030 (July 28, 1964)

A mining claim is properly declared null and void where there has not been found on the claim minerals of such valuable character that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine.

United States v. C. M. Keyes et al., A-30098 (Aug. 18, 1964)

A discovery may be lost as a result of changed economic conditions and a mining claim may be invalidated as a consequence of the loss even though the changed economic conditions which cause the loss of discovery are the result of the Government's control of the gold market.

Where the evidence as to discovery on mining claims is unsatisfactory and inconclusive, the case will be remanded for a further hearing.

United States v. Irving Rand and John M. Balliet, A-30036 (Oct. 19, 1964)

In a hearing on a contest challenging the validity of a mining claim on the ground that a discovery has not been made, it is proper to permit the contestant's witnesses, who have been qualified as mining experts and to whose qualification and the line of questioning eliciting the testimony the contestee has not objected, to give their opinions whether or not a prudent man would be justified in spending time and money with a reasonable chance of success in developing a paying mine on the claim.

Because the validity of a mining claim must be supported by a showing of a currently valuable mineral deposit, it is not error for an expert to base an opinion upon a reasonable chance of developing a paying mine on the claim without considering a possible increase in the price of gold.

United States v. Anita E. Spurrier et al., A-29306 (Oct. 21, 1964)

In stating the rule of discovery in a mining contest, it is immaterial to state the rule as being what "a prudent man" would do rather than what "a man of ordinary prudence" would do; it is frivolous to assume that reference to "a prudent man" imposes a higher degree of prudence than a reference to "a man of ordinary prudence."

It is not error for a hearing examiner to observe in his evaluation of the contestee's evidence in a contest against a mining claim that such evidence shows that the gold values are too low to yield a profit if the claim were worked when it clearly appears that his decision holding the claim to be invalid is predicated upon an independent conclusion that the evidence of gold within the claim is insufficient to warrant a prudent man in the expenditure of time and money in an effort to develop a valuable mine.

United States v. Lewis Reece et al., A-30037 (Oct. 21, 1964)

MINING CLAIMS--Continued

DISCOVERY--Continued

To validate a mining claim covering minerals for which a market must be shown, it must appear that the minerals probably exist on the claim in such quantities as will justify extraction.

A showing of the probable existence of minerals in such quantities as will justify the further expenditure of labor and money with a reasonable prospect of success in developing a valuable mine must be made to meet the test of discovery under the mining laws.

Where mining claimants have not shown that deposits of talc and silica on their claims probably exist in sufficient quantities to justify a prudent man in spending his labor and means with a reasonable prospect of developing a valuable mine, they have not made a discovery of valuable mineral deposits within the meaning of the mining laws.

United States v. E. V. Pressentin and Devisees of the H. S. Martin Estate, A-30004 (Nov. 24, 1964) 71 I.D. 447

To constitute a valid discovery upon a lode mining claim there must be exposed within the limits of the claim a vein or lode of mineral-bearing rock in place of such character that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine, and a claim is properly declared invalid when no evidence is submitted of valuable mineral in a vein or lode but only assays showing some values in a dump and it is not established that the material in the dump came from the claim.

United States v. James E. Hubbart, A-30205 (Nov. 27, 1964)

In a contest challenging the validity of a mining claim for lack of a discovery of a valuable mineral deposit, the mining claimant must sustain the validity of the claim by showing a discovery of valuable mineral which is sufficient to justify a person of ordinary prudence in the further expenditure of labor and means with a reasonable prospect of success in developing a valuable mine.

An application for a mineral patent will be rejected and the mining claim declared null and void where, although the claim may have possibly been valuable for minerals in the past, it is not shown as a present fact that the claim is valuable for minerals.

MINING CLAIMS--Continued

DISCOVERY--Continued

A mining claim is properly declared null and void where the evidence shows only nominal gold values are present on the claim.

United States v. David L. and Kathryn King, A-30217 (Dec. 29, 1964)

HEARINGS

A hearing is not required by departmental practice or by the requirements of due process on the rejection of an application for a patent on mining claims which, over 25 years before the patent application was filed, were declared null and void in adverse proceedings or by a default decision after notice of charges against the claims and an opportunity for a hearing thereon were given the record title owner of the claims.

Union Oil Company of California et al., A-29560 (Apr. 17, 1964) 71 I.D. 169

When the Government makes a prima facie case in contest against a mining claim that there has not been a discovery, the burden of going forth shifts to the claimant to show by a preponderance of the evidence that his claim is valid.

United States v. Fred Garula, A-29948 (June 3, 1964)

Admission of hearsay evidence in a hearing held to determine the validity of a mining claim is not cause for reversal if the decision is supported by substantial evidence, including probative hearsay.

United States v. C. M. Keyes et al., A-30098 (Aug. 18, 1964)

Where the evidence as to discovery on mining claims is unsatisfactory and inconclusive, the case will be remanded for a further hearing.

United States v. Irving Rand and John M. Ballie A-30036 (Oct. 19, 1964)

MINING CLAIMS--Continued

HEARINGS--Continued

Where a Government contest against a mining claim names four individuals as contestees, two of the contestees file an answer requesting a hearing, an attorney files an answer purporting to be on behalf of all the contestees, notice of the hearing is served only on the attorney and none of the contestees or the attorney appears at the hearing and the claim is declared null and void, the decision will be set aside and the case remanded for another hearing where the two contestees who filed an answer submit affidavits that the attorney did not represent them and they did not hold him out as representing them.

United States v. Don Brunkalla et al., A-30231 (Dec. 29, 1964)

LANDS SUBJECT TO

A mining claim located before Aug. 11, 1955, on land within an existing powersite reservation is null and void because the land was then unavailable for mining location.

Wayne England, A-30088 (Apr. 13, 1964)

When mining claims are located on lands within a national forest, the showing of mineral values must be clear and unequivocal.

United States v. Eleanor A. Gray et al., A-28710 (Supp.) (May 7, 1964)

Mining claims located on land within a first-form reclamation withdrawal which was not open to mineral entry are properly declared null and void ab initio.

Robert K. Foster et al., A-29857 (June 15, 1964)

Land which was reserved from the State of Arizona by the United States and classified in 1917 as "actually or prospectively valuable for the development of water power" was not open to mineral location after the passage of the Federal Power Act of June 10, 1920, in the absence of restoration of the land to entry under section 24 of the act, and a mining claim

MINING CLAIMS--Continued

LANDS SUBJECT TO--Continued

located in 1948 was void ab initio where no such restoration of the land to entry had taken place.

E. H. Allen, Frank Melluzzo, A-30182 (July 9, 1964)

LOCATION

Because Revised Statute 2320 provides that no lode mining claim shall extend more than 300 feet on each side of the middle of the vein at the surface, a patent applicant should indicate the direction of the vein and adjust his survey accordingly if the course of the vein diverges from a line through the center of the claim and one of the side lines is more than 300 feet from the center of the vein.

United States v. Alaska Empire Gold Mining Company, A-30082 (July 16, 1964) 71 I.D. 273

LODE CLAIMS

Because Revised Statute 2320 provides that no lode mining claim shall extend more than 300 feet on each side of the middle of the vein at the surface, a patent applicant should indicate the direction of the vein and adjust his survey accordingly if the course of the vein diverges from a line through the center of the claim and one of the side lines is more than 300 feet from the center of the vein.

The Department has no power to issue a mineral patent to any surface ground exceeding 300 feet in width on each side of the middle of the vein or lode, and a patent so issued is void as to the excess over 300 feet and is subject to collateral attack.

United States v. Alaska Empire Gold Mining Company, A-30082 (July 16, 1964) 71 I.D. 273

To constitute a valid discovery upon a lode mining claim there must be exposed within the limits of the claim a vein or lode of mineral-bearing rock in place of such character that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine, and a claim is properly declared invalid when no evidence

MINING CLAIMS--Continued

LODE CLAIMS--Continued

is submitted of valuable mineral in a vein or lode but only assays showing some values in a dump and it is not established that the material in the dump came from the claim.

United States v. James E. Hubbart, A-30205 (Nov. 27, 1964)

MILL SITES

A millsite is properly declared void ab initio when it is located on land withdrawn as a power site.

R. W. Hamlett et al., A-30019 (Feb. 27, 1964)

Land withdrawn for reclamation purposes can be opened to location under the mining laws only where the land is known or believed to be valuable for minerals; consequently, nonmineral land in a reclamation withdrawal cannot, in the absence of other considerations, be opened for location of a mill stie, which is locatable only on nonmineral land.

In opening reclamation withdrawn land to mining location it is necessary that each 10-acre subdivision be mineral in character but it is not required that every acre of the 10-acre tract be mineral in character; consequently where a tract of land is open to mining location and part of the land is nonmineral in character, that part of the land can be included in a mill site.

Rex N. and Mildred B. Anderson, A-29881 (Apr. 24, 1964) 71 I.D. 140

The validity of a mill site that is used in connection with mining operations on a vein or lode is necessarily dependent upon the validity of the lode claim to which it is appurtenant.

United States v. Edgecumbe Exploration Company, Inc., A-29908 (May 25, 1964)

A mill site claim is properly declared invalid where the claim is not occupied or used for mining or milling purposes.

The use of a rehabilitated structure on land embraced in a mill site claim as a base for occasional prospecting activities on nearby patented

MINING CLAIMS--Continued

MILL SITES--Continued

lode claims and the intention to use the land in the future for workmen's housing and an assay office presumably when the claims are developed are not sufficient to comply with the requirements of section 2337 of the Revised Statutes for obtaining a mill site.

United States v. Gilbert C. Wedertz, A-30126 (Oct. 15, 1964) 71 I.D. 368

In a proceeding under section 5(c) of the act of July 23, 1955, to determine the rights of a mining claimant to the surfaces resources of his millsite claim it must be shown that there is a present use or occupancy of the mill site for mining or milling purposes in order to avoid the terms and limitations of section 4 of that act.

United States v. Irving Rand and John M. Balliet, A-30036 (Oct. 19, 1964)

A mill site is properly declared invalid where the claim is not occupied or used for mining or milling purposes.

United States v. E. V. Pressentin and Devisees of the H. S. Martin Estate, A-30004 (Nov. 24, 1964) 71 I.D. 447

Even though the Department's position is that a certain purported millsite is, in fact, not a millsite location but merely an application for a water right, where a contest is initiated against a purported millsite with a different name embracing the same land, it is proper to name the first millsite also in the contest complaint and to make and serve as contestees all persons known to assert a millsite interest in the land in issue.

United States of America v. Grace Martin Hutchins et al., Contest No. 0170969-C-24 (Riverside) (Dec. 4, 1964)

MINING CLAIMS--Continued

MINERAL SURVEYS

Because Revised Statute 2320 provides that no lode mining claim shall extend more than 300 feet on each side of the middle of the vein at the surface, a patent applicant should indicate the direction of the vein and adjust his survey accordingly if the course of the vein diverges from a line through the center of the claim and one of the side lines is more than 300 feet from the center of the vein.

United States v. Alaska Empire Gold Mining Company, A-30082 (July 16, 1964) 71 I.D. 273

PATENT

A protest by a grazing licensee against allowance of an application for a mineral patent is properly rejected where the protest merely makes general uncorroborated assertions that the mining claim is invalid for lack of discovery and that the land is more suitable for grazing and other nonmineral uses.

Dr. and Mrs. A. J. Kafka, A-29807 (Feb. 3, 1964)

The proceedings leading to the cancellation of a mining claim will not be reopened many years after the decision has become final in the absence of a compelling legal or equitable basis warranting reconsideration and an application for patent on a mining claim is properly rejected where, more than sixteen years before the patent application was filed, the claim had been declared null and void and thereafter canceled.

Union Oil Company of California et al., A-29560 (Apr. 17, 1964) 71 I.D. 169

An application for a mineral patent will be rejected and the mining claim declared null and void where, although the claim may formerly have been valuable for minerals, it is not shown as a present fact that the land is mineral in character and is valuable for its mineral content.

United States v. LaFortuna Uranium Mines, Inc., A-29852 (May 4, 1964)

MINING CLAIMS--Continued

PATENT--Continued

Where, after the location of a mining claim, land in the claim is classified for disposition under the Small Tract Act and patents are issued under that act with a reservation to the United States of the mineral rights, the Department has no authority to issue a patent to the mining claimant just for the mineral rights when no regulation exists which permits it to do so but this lack of authority does not affect the validity of the mining claim.

The Dredge Corporation, A-29997 (June 15, 1964)

It is proper to reject a patent application and declare a lode mining claim null and void where the evidence presented in a contest proceeding fails to show a discovery of a valuable mineral deposit even though such evidence may be sufficient to justify further exploration of the claim.

United States v. Edwin R. Saurers et al., A-30097 (July 9, 1964)

The Department has no power to issue a mineral patent to any surface ground exceeding 300 feet in width on each side of the middle of the vein or lode, and a patent so issued is void as to the excess over 300 feet and is subject to collateral attack.

United States v. Alaska Empire Gold Mining Company, A-30082 (July 16, 1964) 71 I.D. 273

POWER SITE LANDS

A millsite is properly declared void ab initio when it is located on land withdrawn as a power site.

R. W. Hamlett et al., A-30019 (Feb. 27, 1964)

Land held under an uncanceled preliminary permit issued under the Federal Power Act for which application for a license under that act was made during the life of the preliminary permit is not open to location under the mining laws.

C. A. Anderson, A-29999 (Mar. 23, 1964)

MINING CLAIMS--Continued

POWER SITE LANDS--Continued

A mining claim located before Aug. 11, 1955, on land within an existing powersite reservation is null and void because the land was then unavailable for mining location.

Wayne England, A-30088 (Apr. 13, 1964)

Land which was reserved from the State of Arizona by the United States and classified in 1917 as "actually or prospectively valuable for the development of water power" was not open to mineral location after the passage of the Federal Power Act of June 10, 1920, in the absence of restoration of the land to entry under section 24 of the act, and a mining claim located in 1948 was void ab initio where no such restoration of the land to entry had taken place.

E. H. Allen, Frank Melluzzo, A-30182 (July 9, 1964)

RELOCATION

Where a verified statement lists a mining claim which has been declared null and void and a mining claim of the same name but described as an amended claim, the statement is properly rejected as to the original location but whether it is effective as to the amended location depends on whether it is a relocation of the old claim or otherwise a new claim in substance.

Everett M. Baumkirchner et al., A-29812 (Feb. 12, 1964)

SPECIAL ACTS

The purchaser under a contract of sale of an undivided two-thirds interest in a mining claim may file the verified statement required of a mining claimant by section 5(a) of the act of July 23, 1955.

United States Department of Agriculture Utah Construction and Mining Co., A-29722 (Jan. 28, 1964) 71 I. D. 3

MINING CLAIMS--Continued

SPECIAL ACTS--Continued

An application for an interest in a mining claim under the act of Oct. 23, 1962, is properly rejected where the mining claim has not been declared invalid or has not been relinquished after notification by an officer of the United States that the claim is believed to be invalid.

Ray D. Warner, A-30271 (Aug. 4, 1964)

In a proceeding under section 5(c) of the act of July 23, 1955, to determine the rights of a mineral claimant to the surface resources of his mining claims it must be shown that there have been valid discoveries within the meaning of the mining laws made within the limits of each of his claims to prevent the claims from being subjected to the terms and limitations of section 4 of that act.

United States v. Irving Rand and John M. Balliet, A-30036 (Oct. 19, 1964)

SURFACE USES

A verified statement which shows mining claims located prior to an administrative decision declaring the claims null and void is properly rejected as to such claims.

Everett M. Baumkirchner et al., A-29812 (Feb. 12, 1964)

A verified statement filed pursuant to section 5 of the act of July 23, 1955, asserting surface rights in mining claims which does not designate the section or sections of the public land survey which embrace the claims is properly rejected as an incomplete statement and it is improper to allow additional time after the expiration of the 150-day period allowed by statute for filing such statement to permit the mining claimant to furnish information that was lacking in the statement as originally filed.

R. D. Compton, Edna A. Compton, A-30206 (July 2, 1964)

MINING CLAIMS--Continued

SURFACE USES--Continued

An application for an interest in a mining claim under the act of Oct. 23, 1962, is properly rejected where the mining claim has not been declared invalid or has not been relinquished after notification by an officer of the United States that the claim is believed to be invalid.

Ray D. Warner, A-30271 (Aug. 4, 1964)

In a proceeding under section 5 (c) of the act of July 23, 1955, to determine the rights of a mineral claimant to the surface resources of his mining claims it must be shown that there have been valid discoveries within the meaning of the mining laws made within the limits of each of his claims to prevent the claims from being subjected to the terms and limitations of section 4 of that act.

United States v. Irving Rand and John M. Balliet, A-30036 (Oct. 19, 1964)

WITHDRAWN LAND

A mining claim located on land subject to reclamation withdrawal initiates no rights in the locator and is void from its purported inception.

Ted W. Fay et al., A-29781 (Jan. 30, 1964)

A mining claim located before Aug. 11, 1955, on land within an existing powersite reservation is null and void because the land was then unavailable for mining location.

Wayne England, A-30088 (Apr. 13, 1964)

Land withdrawn for reclamation purposes can be opened to location under the mining laws only where the land is known or believed to be valuable for minerals; consequently, nonmineral land in a reclamation withdrawal cannot, in the absence of other considerations, be opened for location of a mill site, which is locatable only on nonmineral land.

In opening reclamation withdrawn land to mining location it is necessary that each 10-acre subdivision be mineral in character but it is not required that every acre of the 10-acre tract be mineral in character; consequently where a tract of land is open to mining location and part of the land is nonmineral in character, that part of the land can be included in a mill site.

Rex N. and Mildred B. Anderson, A-29881 (Apr. 24, 1964) 71 I.D.140

Mining claims located on land within a first-form reclamation withdrawal which was not open to mineral entry are properly declared null and void ab initio.

Robert K. Foster et al., A-29857 (June 15, 1964)

A mining claim made on land withdrawn from mineral entry is void ab initio and will not be validated by any modification of the withdrawal to permit mining locations.

Betty J. Fuller, Luella M. Strother, A-30218 (July 13, 1964)

NOTICE

In considering whether an assignee of an oil and gas lease was a bona fide purchaser and entitled to protection in accordance with the bona fide purchaser provisions of the Mineral Leasing Act, as amended, the basic question is whether he in good faith and for value acquired his interest without notice of a superior right to the lease; he will not be considered as having constructive or imputed notice that an offeror whose offer was junior to that for which the lease issued had a right to the lease superior to the lessee, if he acted prudently, even though an extremely cautious person might have ascertained that the junior offeror might have a right to have the voidable lease canceled.

Southwestern Petroleum Corporation, A-29834 (May 26, 1964) 71 I.D. 206

OATHS

A quitclaim deed evidencing the assignment of a desert land entry which was acknowledged outside the State in which the land in the entry is located is properly rejected.

Fred E. Trowbridge, A-29814 (Feb. 11, 1964)

OIL AND GAS LEASES

GENERALLY

Where a junior offeror insinuates that a lease issued to a senior offeror is invalid because the offeror-lessee was not the sole party in interest in the offer and lease but the junior offeror presents nothing more than innuendo or inference to support his allegation, he will not be granted a hearing for the purpose of attempting to develop evidence to support his allegation.

Tom Hoover, A-29777 (Feb. 3, 1964)

It is proper to reject an oil and gas lease offer for Alaskan land to the extent of conflict with an Alaskan selection application after the application has been tentatively approved even though the offer was filed before the selection application.

Union Oil Company of California et al., A-29907 (Feb. 20, 1964)

When after an appeal to the Secretary has been taken from a Bureau of Land Management decision rejecting an oil and gas lease offer new facts which were not available when the Bureau's decision was rendered have been ascertained by the Bureau which may warrant a change in its decision, the case will be remanded to let the Bureau reconsider its decision in light of those facts.

Halvor F. Holbeck, A-30052 (Mar. 10, 1964)

GENERALLY--Continued

When the United States issues an oil and gas lease, it makes no warranty as to its title to the oil and gas deposits and is under no obligation to the lessee either to discover and dispose of any other claims to the oil and gas deposits, not reflected by the records of the Bureau of Land Management, prior to issuance of the lease, or to defend the lease thereafter against such claims.

Duncan Miller, A-30005 (Mar. 11, 1964)

Where land in Alaska is restored from a withdrawal and the State of Alaska does not exercise its statutory preference right to apply for the land within the 90-day period thereafter but does apply to select the land at a later time after an intervening offer for an oil and gas lease is filed, it is proper to give the State selection priority of consideration and to suspend action on the offer pending approval of the selection.

Union Oil Company of California, A-29905 (Mar. 30, 1964)

A protest by a junior offeror in a drawing of simultaneously filed oil and gas lease offers which charges disqualification of a senior offeror because the senior offeror is married to another offeror so that neither was actually the sole party in interest in the separate offers filed is properly dismissed in the absence of any proof that either of the two offerors in question was not acting in his own behalf and that under the law of the State in which the land applied for lies a married person cannot hold or acquire property for his sole benefit without the other spouse's consent.

Duncan Miller, Samuel W. McIntosh, A-30071, A-30081, A-30106 (Apr. 2, 1964) 71 I.D. 121

When a protest against the issuance of an oil and gas lease to a prior offeror has been found to be without merit by the Department and when, thereafter, an appeal is taken from the rejection of the protestant's junior oil and gas lease offer because of the issuance of a lease to the prior offeror, a decision of the Bureau of Land Management which refers to the departmental decision on the protest is a sufficient answer to appellant's objections to the rejection of his offer.

Duncan Miller, A-30147 (Apr. 8, 1964)

L AND GAS LEASES--Continued

GENERALLY--Continued

A noncompetitive oil and gas lease for unsurveyed land which covers all the land described in the offer cannot be amended to include a narrow strip of land later determined to be adjacent to the leased land.

Richfield Oil Corporation, A-29067 (May 26, 1964)

Although a junior offeror may have been the first qualified applicant for an oil and gas lease, if a lease was mistakenly issued to the senior offeror and it is assigned to a bona fide purchaser and the assignment is filed before the land office records show any action taken against the lease, the interests of the bona fide purchaser will be protected in accordance with the 1959 and 1960 amendments of the Mineral Leasing Act and the junior offeror's offer must be rejected.

In considering whether an assignee of an oil and gas lease was a bona fide purchaser and entitled to protection in accordance with the bona fide purchaser provisions of the Mineral Leasing Act, as amended, the basic question is whether he in good faith and for value acquired his interest without notice of a superior right to the lease; he will not be considered as having constructive or imputed notice that an offeror whose offer was junior to that for which the lease issued had a right to the lease superior to the lessee, if he acted prudently, even though an extremely cautious person might have ascertained that the junior offeror might have a right to have the voidable lease canceled.

An assignee of an oil and gas lease, if the assignment is otherwise valid, is entitled to protection in accordance with the bona fide purchaser provisions of the Mineral Leasing Act if his assignment is filed before any adverse action or protest has been made against the lease even though the assignment had not been approved before such action or protest is made.

Southwestern Petroleum Corporation, A-29834
(May 26, 1964) 71 I. D. 206

When the United States issues an oil and gas lease, it makes no warranty as to its title to the oil and gas deposits and is under no obligation to the lessee either to discover and dispose of any other claims to the oil and gas deposits, not reflected by the records of the Bureau of Land Management, prior to issuance of the lease, or to defend the lease thereafter against such claims.

Duncan Miller, A-30122 (Sept. 23, 1964)

OIL AND GAS LEASES--Continued

ACQUIRED LANDS LEASES

An acquired lands lease offer for a tract of land consisting of portions of several irregularly shaped surveyed tracts of land no part of the boundaries of which coincide with any part of the boundary of the tract applied for need not, in addition to giving a complete metes and bounds description of the tract tied to a corner of the public land surveys, give the section numbers of the surveyed tracts portions of which are included in the tract applied for.

Carolyn C. Stockmeyer, Executrix, A-29737
(Feb. 7, 1964) 71 I. D. 45

An oil and gas lease offer for acquired land filed before the amendment of the Mineral Leasing Act on Sept. 2, 1960, which was still pending at that time, became subject to the act of Sept. 2, 1960, so that the offeror is properly required to consent to the issuance of a lease subject to the terms prescribed by the amendatory act.

Duncan Miller, A-30192 (Apr. 9, 1964)

An oil and gas offer for acquired land is not defective because it is not accompanied by a map or plat showing the location of the land within the administrative unit or project of which it is a part, but the offeror may be required to submit a satisfactory showing of such a map or plat.

Tidewater Oil Company, A-30087 (July 22, 1964)
71 I. D. 277

An oil and gas lease offer for acquired land is properly rejected when the offeror files only one copy of the offer and fails to file the additional six copies required by the applicable regulation within the 30-day period allowed for that purpose, and the offeror is not relieved from filing the additional copies because, within the 30-day period, his offer is conditionally rejected because it did not receive first priority at a drawing of simultaneously filed offers.

Grace B. Moss, A-30203 (Dec. 4, 1964)

OIL AND GAS LEASES--Continued

ACREAGE LIMITATIONS

Acreage embraced in a lease offer which is subject to drawing to determine priority will not be charged against the offeror until the offer has been successfully drawn.

Chargeability of Acreage Embraced in Oil and Gas Lease Offers, M-36670 (Sept. 17, 1964)
71 I. D. 337

APPLICATIONS

The Departmental decision in Henry S. Morgan, Floyd A. Wallis, et al., BLM-A-036376 (1956), affirmed by the Secretary of the Interior, 65 I. D. 369 (1958), is overruled to the extent that it is inconsistent or in conflict with the conclusion reached in the opinion of the Solicitor General issued December 20, 1963.

Interpretation of the Submerged Lands Act, M-36665 (Jan. 31, 1964) 71 I. D. 20
See Solicitor General's Opinion, Dec. 20, 1963, p 22

Where a junior offeror attacks the issuance of a lease to a senior offeror whose offer was determined to have priority at a drawing on the ground that the senior offer had been unconditionally rejected without an appeal by the senior offeror and was reinstated after the junior offer had priority, the attack must fail where the fact is that the senior offer was never rejected but remained on file until the lease was issued.

Tom Hoover, A-29777 (Feb. 3, 1964)

In considering a protest against a specific offer which did not draw first priority in a drawing, the Bureau of Land Management is not required to determine whether all of the offers which participated in the drawing properly describe the land sought merely because the protest contains a general assertion that all of the offers improperly described the lands applied for.

Arthur E. Meinhart, A-30168 (Feb. 17, 1964)

Where an offer which drew first priority in a drawing of simultaneously filed offers is rejected because it is defective, the offer which drew the next priority may be reinstated although it had been conditionally rejected, subject to reinstatement in the event offers with a higher priority did not ripen into leases, and no appeal had been

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

taken from that action, and although another offer which may not be defective was filed before reinstatement of the offer by the offeror who had originally drawn first priority.

Robert B. Nation, A-29822 (Feb. 18, 1964)

An oil and gas lease offer will be rejected when the land applied for had formerly been included in an oil and gas lease terminated by operation of law but had not yet been posted as available for filing at the time the offer was filed.

The fact that a land office has posted a notice in accordance with 43 CFR 192.43(b) describing lands in a lease which terminated by operation of law does not make those lands available for leasing if the notice also states that the lands are not available for leasing.

Union Oil Company of California, A-29904 (Feb. 20, 1964)

Dismissal of a protest against priorities established by public drawing of oil and gas lease offers is proper when the general allegations of collusion therein are unsupported.

Duncan Miller, A-29900 (Mar. 5, 1964)

It is proper to reject an oil and gas lease offer covering land formerly embraced in a relinquished lease where the relinquishment has been noted on the official records but where the land has not been posted as subject to new lease offers.

Mountain Fuel Supply Company, A-29971 (Mar. 13, 1964)

Oil and gas lease offers filed under the simultaneous-filing procedure in 43 CFR 192.43, accompanied with personal checks for the advance rental payment, are properly rejected for noncompliance with subdivision (c) of that regulation, in effect when the offers were filed.

Chester F. Merriman, A-30033 (Mar. 23, 1964)

An offeror whose offer for an oil and gas lease was filed prior to the act of Sept. 2, 1960, amending the Mineral Leasing Act, is properly required to consent to comply with and be bound by all of the provisions of that amendatory act.

Duncan Miller, A-30044 (Mar. 25, 1964)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

An oil and gas lease application is properly rejected when information as to whether or not the offeror is the sole party in interest was not submitted as required by regulation 43 CFR 192.42(e)(3)(iii).

The signing of an oil and gas lease application by a single offeror and the failure by the offeror to submit a statement as to other interested parties cannot be construed to imply that the offeror is the sole party in interest.

Jane H. Cotter, A-29850 (Mar. 25, 1964)

Oil and gas lease offers which do not draw first **priority in a drawing of** simultaneously filed **offers may be conditionally** rejected, subject to **reinstatement in the event** offers with higher **priorities do not ripen** into leases.

Duncan Miller, Samuel W. Mcintosh, A-30071, **A-30081, A-30106** (Apr. 2, 1964) 71 I. D. 121

An oil and gas lease offer is properly denied reinstatement when the offeror fails to comply with the land office requirement for submission of four copies of the offer, as originally filed, within 30 days after receipt of the notice to do so.

Duncan Miller, A-30180 (Apr. 8, 1964)

An oil and gas lease offer for acquired land filed before the amendment of the Mineral Leasing Act on Sept. 2, 1960, which was still pending at that time, became subject to the act of Sept. 2, 1960, so that the offeror is properly required to consent to the issuance of a lease subject to the terms prescribed by the amendatory act.

Duncan Miller, A-30192 (Apr. 9, 1964)

It is proper to reject an offer to lease for oil and gas purposes a long narrow strip of land less than three chains wide when there are no compelling factors of public interest for the issuance of leases and no indication that keeping the land unleased will adversely affect the development of the adjoining leased lands.

Richfield Oil Corporation, A-29067 (May 26, 1964)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Oil and gas lease offers describing strips of unsurveyed land which are surrounded by other public land oil and gas leases are improperly rejected where there is no doubt that the strips exist and they are more than 10 chains wide.

Where the historical index for public lands shows that certain lands are unsurveyed and that leases covering them have been issued with a metes and bounds description, the records show not that the lands have been leased by legal subdivision but rather by metes and bounds and that the leases include only the areas described by the metes and bounds description.

Eloise L. Beckwith, A-28967 (May 26, 1964)

A person who selects the land to be applied for, fills in the land description on the offer, and is to receive a commission if the price he obtains for finding an assignee for the lease is satisfactory to the lease offeror is an agent of the offeror, and the offer to earn priority must be accompanied by the statement required by the regulation then in effect, 43 CFR 192.42(e)(4)(i), notwithstanding that the agency may not be the lease.

B. F. Sandoval, Jr., Leah P. Golden, A-29975 (June 12, 1964)

An oil and gas lease offer is properly rejected when it is filed subsequent to the issuance of a public land order revoking a prior order withdrawing the land applied for where the restoration order provides that the land involved shall not be open to applications and offers under the mineral leasing laws until a certain date, which is subsequent to the date of the filing of appellant's offer.

W. W. Priest, A-30232 (July 13, 1964)

Any name used by an individual, whether real or fictitious, by which she may be known or by which she may transact business or execute contracts, may constitute her signature if affixed by that individual without fraudulent intent and if there is no doubt as to the identity of the individual, and an oil and gas lease offer in which the signed name of the offeror differs from the typed name of the offeror in the first block of

the lease form is acceptable if, in fact, the signature is that of the offeror and the offer is, in all other respects, acceptable.

Where only one copy of an oil and gas lease offer is initially filed bearing as a signature a name which differs from the name of the offeror typed in the first block of the lease form, within 30 days four additional copies of the offer are filed bearing the same typed name and signature as the typed name on the original form, and after more than 30 days from the initial filing five additional copies are filed bearing typed name and signature consistent with the original form, the offer should not be rejected if all of the copies of the offer were signed by the offeror, but the offer will earn priority only from the time that the last copies were filed.

Mary Adele Monson, A-29952 (July 14, 1964)
71 I. D. 269

A protest against a noncompetitive oil and gas lease offer for acquired land is properly sustained where the offer is signed by an attorney in fact for a corporate offeror and is accompanied only by a statement of the attorney in fact as to the nonexistence of an agreement between the attorney in fact and the offeror whereby the attorney in fact will acquire an interest in any lease to be issued and by a statement by the offeror that a third party will have an interest in the lease and there is not filed any statement by the offeror as to whether the attorney in fact will acquire any interest in the lease.

Where only one copy of an oil and gas offer for acquired lands is filed and thereafter within the time allowed the additional copies required are filed but such additional copies vary from the first copy in a portion of the land description, the offer is not fatally defective and the first copy filed is deemed to be controlling despite the fact that it was not marked as the "original" copy by either the offeror or the Bureau of Land Management.

Tidewater Oil Company, A-30087 (July 22, 1964)
71 I. D. 277

An oil and gas lease offer signed by an attorney in fact is not to be rejected for failure to accompany it with evidence of his authority to sign the offer and lease if the offer contains a reference to a land office record in which the pertinent information has been filed.

An oil and gas lease offer signed by an attorney in fact for the offeror is properly rejected where it is not accompanied by a statement of the

attorney's possible interest in the offer and the lease, if issued, and, if there is such interest, the further statements as to the attorney's qualifications to hold an oil and gas lease as required by departmental regulation.

Union Oil Company of California, A-30035
(July 27, 1964) 71 I. D. 287

When the Secretary of the Interior exercises his discretionary authority to issue oil and gas leases or to refrain from doing so by declaring that certain areas of public land reserved for wildlife use are closed to oil and gas leasing because leasing would be incompatible with wildlife use, oil and gas lease offers for land in the closed areas are properly rejected.

Hunt Petroleum Corporation, A-30121 (Sept. 23, 1964)

It is improper to finally reject an oil and gas lease offer previously conditionally rejected because of low priority acquired in a public drawing of simultaneously filed offers without notification to the offeror of the final rejection, the reason for such rejection, and of the right of appeal from such rejection.

An oil and gas lease offer for acquired land is properly rejected when the offeror files only one copy of the offer and fails to file the additional six copies required by the applicable regulation within the 30-day period allowed for that purpose, and the offeror is not relieved from filing the additional copies because, within the 30-day period, his offer is conditionally rejected because it did not receive first priority at a drawing of simultaneously filed offers.

Grace B. Moss, A-30203 (Dec. 4, 1964)

An oil and gas lease offer is properly rejected where it describes land by a meridian and in a county of one State, but designates the land as being in a second State and is filed in the land office of the second State.

Zula Mae Dennis, A-30298 (Dec. 24, 1964)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

An oil and gas lease offer is properly rejected when it does not adequately describe the land applied for.

The opportunity given one who files a defective offer to file a new offer within 30 days and to have the rental payment and filing fee for the old offer applied to the new offer does not enable him to have the offer given the priority of filing of the old offer.

J. R. Wegierski, A-30252 (Dec. 28, 1964)

A protest by an offeror against leases issued for prior-filed offers on charges of an unlawful trust and practices under sec. 27 of the Mineral Leasing Act is properly dismissed when the charges are not adequately detailed with clarity and are not supported by any evidence, and at the most suggest only that the leases were issued to persons who had held previous leases for the lands but had relinquished them and filed the new offers, since such a practice was not prohibited under the act.

Duncan Miller, A-30304 (Dec. 31, 1964)

When an oil and gas lease offer is rejected and the offeror files a new lease offer to which the filing fee and rental from the first lease offer are applied and to which the same serial number is assigned, the second offer is properly rejected if it does not comply with the mandatory requirements for filing the statements of interest required where the offeror has declared that he is not the sole party in interest; statements of interest accompanying the prior offer cannot be considered to fulfill the requirements in regard to the second offer.

Marvel Petroleum Corporation, A-30163 (Dec. 31, 1964)

ASSIGNMENTS OR TRANSFERS

A request for approval of an oil and gas assignment need not be rejected for the sole reason that it was not filed within 90 days after the execution of the assignment as required by regulation 43 CFR 192.141(a)(2) where that regulation has not been interpreted as making the requirement mandatory and where there are no intervening adverse parties who might be affected by approval of the assignment.

OIL AND GAS LEASES--Continued

ASSIGNMENTS OR TRANSFERS--Continued

Alice R. Rudie, A-30061 (Mar. 25, 1964)

A request for approval of a partial assignment of an oil and gas lease is incomplete until all of the documents required by the statute to be filed with such request, including any required bond, have been filed and an incomplete application is properly rejected when the parties fail to file all of the required documents in time to permit approval of the assignment.

Since in order for a lease to become segregated through partial assignment and thus entitled to the extension authorized for segregated leases, a request for approval of a partial assignment must be filed while there is still one month remaining in the lease term, and if the requirements are not met before the end of the next to the last month of the lease term, approval of the assignment is properly denied.

Texaco, Inc., and Nancy Leigh Grant, A-30143 (Mar. 25, 1964)

Although a junior offeror may have been the first qualified applicant for an oil and gas lease, if a lease was mistakenly issued to the senior offeror and it is assigned to a bona fide purchaser and the assignment is filed before the land office records show any action taken against the lease, the interests of the bona fide purchaser will be protected in accordance with the 1959 and 1960 amendments of the Mineral Leasing Act and the junior offeror's offer must be rejected.

In considering whether an assignee of an oil and gas lease was a bona fide purchaser and entitled to protection in accordance with the bona fide purchaser provisions of the Mineral Leasing Act, as amended, the basic question is whether he in good faith and for value acquired his interest without notice of a superior right to the lease; he will not be considered as having constructive or imputed notice that an offeror whose offer was junior to that for which the lease issued had a right to the lease superior to the lessee, if he acted prudently, even though an extremely cautious person might have ascertained that the junior offeror might have a right to have the voidable lease canceled.

OIL AND GAS LEASES--Continued

ASSIGNMENTS OR TRANSFERS--Continued

An assignee of an oil and gas lease, if the assignment is otherwise valid, is entitled to protection in accordance with the bona fide purchaser provisions of the Mineral Leasing Act if his assignment is filed before any adverse action or protest has been made against the lease even though the assignment had not been approved before such action or protest is made.

Southwestern Petroleum Corporation, A-29834
(May 26, 1964) 71 I. D. 206

An oil and gas lease is improperly issued where the offer includes less than 640 acres and the land applied for is adjoined by land in a lease the fixed term of which has expired, although a partial assignment of that lease has been filed the approval of which will continue the lease for two years.

An oil and gas lease issued in violation of the 620-acre rule is not subject to cancellation if it has been assigned to a bona fide purchaser.

Duncan Miller, A-30212 (July 13, 1964)

Section 10 of the act of July 3, 1958, amending the Alaska Oil Proviso of the Mineral Leasing Act of 1920 to require rentals for noncompetitive oil and gas leases in Alaska to be the same as similar leases for lands elsewhere in the United States, is not applicable to leases which had been granted 5-year extensions prior to the act as to the remainder of their extended term, including a 2-year extension resulting from segregation of the lease by partial assignment under section 30(a) of the Mineral Leasing Act, as amended.

Richfield Oil Corporation Shell Oil Company,
A-30154, A-30223 (July 30, 1964) 71 I. D. 294

When an assignment of an oil and gas lease has been approved by the Department and thereafter it appears that there is a controversy as to the validity of the assignment, the Department will not rescind approval of the assignment, even though there were some irregularities apparent on the assignment, but will maintain the status quo for a period sufficient to permit the parties to institute litigation or take other action to resolve their dispute.

McCulloch Oil Corporation of California,
A-30208 (Nov. 25, 1964)

OIL AND GAS LEASES--Continued

ASSIGNMENTS OR TRANSFERS--Continued

Where an assignment of operating rights in a lease is made after the apparent termination date of a lease, it is questionable whether the assignee has any standing to question a determination that the lease had in fact terminated when neither the lessee nor the assignor of the operating rights questions the determination.

An oil and gas lease is properly held terminated and a subsequently filed proposed assignment of operating rights properly returned unapproved when it has been determined that a well on the land leased was not a well capable of producing oil or gas in paying quantities as of the date of termination of the lease, so that no notice to the lessee to resume production was necessary prior to declaring the lease to be terminated.

Juniper Oil and Mining Company, A-30181
(Dec. 4, 1964)

BONDS

A request for approval of a partial assignment of an oil and gas lease is incomplete until all of the documents required by the statute to be filed with such request, including any required bond, have been filed and an incomplete application is properly rejected when the parties fail to file all of the required documents in time to permit approval of the assignment.

Texaco, Inc., and Nancy Leigh Grant, A-30143
(Mar. 25, 1964)

CANCELLATION

Where an oil and gas lease offer was filed prior to enactment of the Alaska Statehood Act on July 7, 1958, a selection for the land was filed thereafter by the Territory of Alaska pursuant to the grant for the University of Alaska, and a lease was subsequently issued in response to the offer and prior to the admission of the State of Alaska on Jan. 3, 1959, it is error to cancel the lease because of the filing of the selection and it is immaterial that subsequent to the admission of the State the land was patented to the State pursuant to the selection.

Standard Oil Company of California, A-29263
(Jan. 27, 1964) 71 I. D. 1

An oil and gas lease offer which describes land within an area over six miles in width and within

IL AND GAS LEASES--Continued

CANCELLATION--Continued

an area covering five whole sections and parts of two end sections in width does not comply with the regulation requiring that land sought for leasing must be within an area six miles square or within an area not exceeding six surveyed sections in length or width, and a lease issued in response to such offer is improperly issued and subject to cancellation if proper junior offers have been filed for the land.

Hugh E. Pipkin et al., A-30021 (Mar. 4, 1964)
71 I. D. 89

An oil and gas lease is properly canceled where it was issued pursuant to an application which described less than 640 acres which were available for leasing at the time the application was filed and did not include adjoining lands which were available for leasing.

Empire State Oil Company, Jack J. Grynberg, A-29761 (Mar. 6, 1964) 71 I. D. 92

An oil and gas lease issued for land which was not described in the offer as required by the regulations of the Department is properly canceled as to a portion of such land which was properly described in a junior offer for such land.

Merwin E. Liss CBN Corporation, A-29891 (Apr. 22, 1964)

In considering whether an assignee of an oil and gas lease was a bona fide purchaser and entitled to protection in accordance with the bona fide purchaser provisions of the Mineral Leasing Act, as amended, the basic question is whether he in good faith and for value acquired his interest without notice of a superior right to the lease; he will not be considered as having constructive or imputed notice that an offeror whose offer was junior to that for which the lease issued had a right to the lease superior to the lessee, if he acted prudently, even though an extremely cautious person might have ascertained that the junior offeror might have a right to have the voidable lease canceled.

Southwestern Petroleum Corporation, A-29834 (May 26, 1964) 71 I. D. 206

An oil and gas lease is subject to administrative cancellation after issuance upon the finding of fatal deficiencies in the lease offer.

B. F. Sandoval, Jr., Leah P. Golden, A-29975 (June 12, 1964)

OIL AND GAS LEASES--Continued

CANCELLATION--Continued

An oil and gas lease issued in violation of the 640-acre rule is not subject to cancellation if it has been assigned to a bona fide purchaser.

Duncan Miller, A-30212 (July 13, 1964)

An oil and gas lease is properly canceled when subsequent to issuance of the lease it is discovered that the land was not available for leasing because full payment had been made by a preemption entryman for the land under the act of Mar. 3, 1811, prior to the issuance of the lease and interest in the land had thus passed from the United States.

M. R. Gallion, A-30075 (July 23, 1964)

CONSENT OF AGENCY

An applicant for a noncompetitive oil and gas lease of acquired lands being administered by the Forest Service is properly required to file written consent to a stipulation imposed by that agency as a condition precedent to issuance of the lease.

Jacob N. Wasserman, A-30275 (Sept. 22, 1964)

DESCRIPTION OF LAND

An acquired lands lease offer for a tract of land consisting of portions of several irregularly shaped surveyed tracts of land no part of the boundaries of which coincide with any part of the boundary of the tract applied for need not, in addition to giving a complete metes and bounds description of the tract tied to a corner of the public land surveys, give the section numbers of the surveyed tracts portions of which are included in the tract applied for.

Carolyn C. Stockmeyer, Executrix, A-29737 (Feb. 7, 1964) 71 I. D. 45

A description in an oil and gas lease offer for acquired land of land in a right-or-way which is excluded from the land applied for is insufficient where the right-of-way is described only by giving the course and distance of the center line and the width of the right-of-way and by tieing the description to a quarter-quarter section corner.

OIL AND GAS LEASES--Continued

DESCRIPTION OF LAND--Continued

Where an oil and gas offer for land described as the S1/2S1/2 of a section is deficient because it improperly describes land in the S1/2S1/2 which is to be excluded from the offer, the offer cannot be accepted for the S1/2SE1/4 because it is ascertained that the excluded land lies in the S1/2 SW1/4 of the section.

Charles J. Babington, A-29688 (Mar. 20, 1964)
71 I.D. 110

Under regulation 43 CFR 192.42a(c), 24 F.R. 4141, which required that descriptions of land in oil and gas lease offers for land shown on protracted surveys be described only according to the section, township, and range shown on the approved protracted surveys, it is not proper to reject offers to the extent that they describe only aliquot parts of protracted sections.

Socony Mobil Oil Company, Inc., A-30131
(Apr. 6, 1964)

Under regulation 43 CFR 3123.8, which requires that oil and gas lease offers for lands shown on protracted surveys include only entire sections of land or describe all of the lands available for leasing in each section by legal subdivisional parts, where only a portion of a section is available, it is not proper to reject an offer for such land which describes all of the land in the section with a statement that the offer is to be deemed to include all of the land in the described section which is available for lease if the offer is accompanied by the first year's rental payment for the entire section.

William B. Collister, A-30116 (Apr. 15, 1964)
71 I.D. 124

An oil and gas lease offer for surveyed land is properly rejected when the description of the land applied for neglects to describe the direction of the range as east or west.

George A. Salzer, E. W. Sawyer, A-30170
(Apr. 15, 1964)

OIL AND GAS LEASES--Continued

DESCRIPTION OF LAND--Continued

A description of lands applied for by an oil and gas lease offer filed on July 21, 1954, in the Monongahela National Forest, West Virginia, which followed the monumented corners of the survey made by the United States except for one line which ran through the interior tract from one corner to another corner but did not include a course and distance description thereof is not an adequate description of the land under the regulation, 43 CFR, 1949 ed., 200.5, then in effect.

Merwin E. Liss CBN Corporation, A-29891
(Apr. 22, 1964)

Where the historical index for public lands shows that certain lands are unsurveyed and that leases covering them have been issued with a metes and bounds description, the records show not that the lands have been leased by legal subdivision but rather by metes and bounds and that the leases include only the areas described by the metes and bounds description.

Eloise L. Beckwith, A-28967 (May 26, 1964)

Where an oil and gas lease offer for land described as the "S1/2SW1/4" of a section, excepting a certain part of the "SW1/4SW1/4" is deficient because it improperly describes land in the SW1/4SW1/4 which is to be excluded from the offer, the offer is acceptable for the SE1/4SW1/4 since it is ascertainable from the description that the improperly described land lies only in the SW1/4SW1/4 of the section and the description of the land in the SE1/4SW1/4 meets the regulatory requirements.

James P. Witmer, A-30227 (July 10, 1964)

An offer to lease acquired land for oil and gas purposes is properly accepted when, in the description of the land contained in such offer, a deviation of a portion of the boundary which does not conform to the public land survey is tied to a quarter-section corner which is an established survey corner as required in the applicable departmental regulation.

Charles J. Babington, A-30149 (July 13, 1964)

DESCRIPTION OF LAND--Continued

Where only one copy of an oil and gas offer for acquired lands is filed and thereafter within the time allowed the additional copies required are filed but such additional copies vary from the first copy in a portion of the land description, the offer is not fatally defective and the first copy filed is deemed to be controlling despite the fact that it was not marked as the "original" copy by either the offeror or the Bureau of Land Management.

An oil and gas offer for acquired land is not defective because it is not accompanied by a map or plat showing the location of the land within the administrative unit or project of which it is a part, but the offeror may be required to submit a satisfactory showing of such a map or plat.

Tidewater Oil Company, A-30087 (July 22, 1964)
71 I.D. 277

When an application for a noncompetitive oil and gas lease of unsurveyed land contains a metes and bounds description which uses as one line the center thread of a river, unsurveyed on either bank, without giving courses and distances, the offer is properly rejected because the acreage applied for cannot be computed.

Halvor F. Holbeck, A-30151 (Oct. 5, 1964)

An oil and gas lease offer is properly rejected where it describes land by a meridian and in a county of one State, but designates the land as being in a second State and is filed in the land office of the second State.

Zula Mae Dennis, A-30298 (Dec. 24, 1964)

An oil and gas lease offer is properly rejected when it does not adequately describe the land applied for.

J. R. Wegierski, A-30252 (Dec. 28, 1964)

DISCRETION TO LEASE

Oil and gas lease offers describing strips of unsurveyed land which are surrounded by other

DISCRETION TO LEASE--Continued

public land oil and gas leases are improperly rejected where there is no doubt that the strips exist and they are more than 10 chains wide.

Eloise L. Beckwith, A-28967 (May 26, 1964)

It is proper to reject an offer to lease for oil and gas purposes a long narrow strip of land less than three chains wide when there are no compelling factors of public interest for the issuance of leases and no indication that keeping the land unleased will adversely affect the development of the adjoining leased lands.

Richfield Oil Corporation, A-29067 (May 26,1964)

When the Secretary of the Interior exercises his discretionary authority to issue oil and gas leases or to refrain from doing so by declaring that certain areas of public land reserved for wildlife use are closed to oil and gas leasing because leasing would be incompatible with wildlife use, oil and gas lease offers for land in the closed areas are properly rejected.

Hunt Petroleum Corporation, A-30121 (Sept. 23, 1964)

DRILLING

To qualify as actual drilling operations sufficient to extend an oil and gas lease pursuant to section 4(d) of the Mineral Leasing Act Revision of 1960, drilling must be conducted in such a way as to be a serious effort which one seriously looking for oil and gas could be expected to make in that particular area, given existing knowledge of geologic and other factors normally considered when drilling for oil and gas.

Where the purpose of drilling a well is only to test shallow formations 500 feet deep, known to be fresh water aquifers in the area surrounding the well, where gas has been found within several miles only in formations below 7,000 feet, and the nearest production from the shallow formations is about 25 miles away, the drilling does not serve to extend the life of a lease that would otherwise expire.

Standard Oil Company of Texas, A-30137,
A-30221 (July 1, 1964) 71 I.D. 257

OIL AND GAS LEASES--Continued

DRILLING--Continued

An oil and gas lease is not entitled to a 2-year extension under section 4(d) of the Mineral Leasing Act Revision of 1960, which grants such an extension when the lessee has commenced "actual drilling operations" before the end of its term and is diligently prosecuting such operations at the end of the term, when prior to the expiration date of the lease the only acts undertaken by the lessee are acts preliminary to the actual drilling and the actual drilling is not commenced until after the lease has terminated.

Michigan Oil Company, A-29828 (July 10, 1964)
71 I.D.263

EXTENSIONS

An application for extension of a 5-year noncompetitive oil and gas lease is properly rejected where the required filing fee is not paid prior to the expiration of the primary term of the lease.

Thomas J. Murphy, A-30025 (Mar. 10, 1964)

An application for extension of a five-year noncompetitive oil and gas lease is properly rejected where the required filing fee is not paid prior to the expiration of the primary term of the lease.

Louis H. Zanner, A-30062 (Mar. 11, 1964)

Since in order for a lease to become segregated through partial assignment and thus entitled to the extension authorized for segregated leases, a request for approval of a partial assignment must be filed while there is still one month remaining in the lease term, and if the requirements are not met before the end of the next to the last month of the lease term, approval of the assignment is properly denied.

Texaco, Inc., and Nancy Leigh Grant, A-30143 (Mar. 25, 1964)

An oil and gas lease on land within the known geologic structure of a producing gas field which attains a minimum royalty status because of inclusion in the participating area of a producing gas unit but on which there is no producing or producible well and which is subsequently extended as a consequence of the termination of the unit reverts to a rental status and is subject to the automatic termination provision of the act of July 29, 1954.

Murphy Corporation, A-29849 (June 3, 1964)
71 I.D.263

To qualify as actual drilling operations sufficient to extend an oil and gas lease pursuant to section 4(d) of the Mineral Leasing Act Revision of 1960, drilling must be conducted in such a way as to be a serious effort which one seriously looking for oil and gas could be expected to make in that particular area, given existing knowledge of geologic and other factors normally considered when drilling for oil and gas.

Where the purpose of drilling a well is only to test shallow formations 500 feet deep, known to be fresh water aquifers in the area surrounding the well, where gas has been found within several miles only in formations below 7,000 feet, and the nearest production from the shallow formations is about 25 miles away, the drilling does not serve to extend the life of a lease that would otherwise expire.

Standard Oil Company of Texas, A-30137, A-30221 (July 1, 1964) 71 I.D. 257

An oil and gas lease is not entitled to a 2-year extension under section 4(d) of the Mineral Leasing Act Revision of 1960, which grants such an extension when the lessee has commenced "actual drilling operations" before the end of its term and is diligently prosecuting such operations at the end of the term, when prior to the expiration date of the lease the only acts undertaken by the lessee are acts preliminary to the actual drilling and the actual drilling is not commenced until after the lease has terminated.

Michigan Oil Company, A-29828 (July 10, 1964)
71 I.D. 263

The annual rental due for the sixth and succeeding years on noncompetitive oil and gas leases in Alaska issued prior to July 3, 1958, and extended thereafter is at the rate of 50 cents per acre per annum.

Colorado Oil and Gas Corporation, A-30003 (July 27, 1964) 71 I.D. 284

EXTENSIONS--Continued

Section 10 of the act of July 3, 1958, amending the Alaska Oil Proviso of the Mineral Leasing Act of 1920 to require rentals for noncompetitive oil and gas leases in Alaska to be the same as similar leases for lands elsewhere in the United States, is not applicable to leases which had been granted 5-year extensions prior to the act as to the remainder of their extended term, including a 2-year extension resulting from segregation of the lease by partial assignment under section 30(a) of the Mineral Leasing Act, as amended.

Richfield Oil Corporation Shell Oil Company, A-30154, A-30223 (July 30, 1964) 71 I.D. 294

Where an application for a 5-year extension of a noncompetitive oil and gas lease is stamped as filed on the day after the expiration date of the lease and the applicant claims but offers no convincing proof that the application was actually received the previous day, the application is properly rejected.

It is improper to deny an application for extension of a noncompetitive oil and gas lease filed within the proper time by an assignee of the lease whose first assignment has been filed for approval and is still pending in the land office when the application for extension is filed even though an adverse decision not yet effective has been issued in response to the request for approval of the first assignment and the assignee thereafter files a second assignment.

Kenneth J. Kadow et al., A-30053 (Oct. 5, 1964)

A noncompetitive oil and gas lease will be extended beyond its primary term only when actual drilling operations have been commenced prior to the expiration of the lease and are being diligently prosecuted or there is a well on the land capable of producing oil or gas in paying quantities.

An oil and gas lease will not be extended pursuant to section 4(d) of the Mineral Leasing Act Revision of 1960 when it appears that no well was actually being bored with drilling equipment on the leased land at the expiration of the lease and the lessee was merely engaged in other work such as bailing tests, running tubing, etc.

A noncompetitive oil and gas lease is properly declared terminated at the expiration of its extended term when it appears that the lessee's claim to a well capable of producing oil or gas in paying quantities rests upon an uncompleted well which was not in a physical condition to produce oil and gas in paying quantities.

Carl Losey et al., A-30153 (Dec. 4, 1964)

Where an assignment of operating rights in a lease is made after the apparent termination date of a lease, it is questionable whether the assignee has any standing to question a determination that the lease had in fact terminated when neither the lessee nor the assignor of the operating rights questions the determination.

An oil and gas lease is properly held terminated and a subsequently filed proposed assignment of operating rights properly returned unapproved when it has been determined that a well on the land leased was not a well capable of producing oil or gas in paying quantities as of the date of termination of the lease, so that no notice to the lessee to resume production was necessary prior to declaring the lease to be terminated.

Juniper Oil and Mining Company, A-30181 (Dec. 4, 1964)

FIRST QUALIFIED APPLICANT

Where a junior offeror attacks the issuance of a lease to a senior offeror whose offer was determined to have priority at a drawing on the ground that the senior offer had been unconditionally rejected without an appeal by the senior offeror and was reinstated after the junior offer had priority, the attack must fail where the fact is that the senior offer was never rejected but remained on file until the lease was issued.

Tom Hoover, A-29777 (Feb. 3, 1964)

A protest by a junior offeror in a drawing of simultaneously filed oil and gas lease offers which charges disqualification of a senior offeror because the senior offeror is married to another offeror so that neither was actually the sole party in interest in the separate offers filed is properly dismissed in the absence of any proof that either of the two offerors in question was not acting in his own behalf and that under the law of the State in which the land applied for lies a married person cannot hold or acquire property for his sole benefit without the other spouse's consent.

Duncan Miller, Samuel W. McIntosh, A-30071, A-30081, A-30106 (Apr. 2, 1964) 71 I.D. 121

OIL AND GAS LEASES--Continued

FIRST QUALIFIED APPLICANT--Continued

An oil and gas lease offer submitted over the counter after the offeror has attended to other business in the land office is given priority on the basis of the actual filing time even though the offeror was tendering his offer to the clerk when a conflicting offer was received from another offeror directly ahead of him in the line at the counter and such conflicting offer was stamped as received only one minute earlier.

Hoover H. Wright, A-30127 (Apr. 6, 1964)

Although a junior offeror may have been the first qualified applicant for an oil and gas lease, if a lease was mistakenly issued to the senior offeror and it is assigned to a bona fide purchaser and the assignment is filed before the land office records show any action taken against the lease, the interests of the bona fide purchaser will be protected in accordance with the 1959 and 1960 amendments of the Mineral Leasing Act and the junior offeror's offer must be rejected.

Southwestern Petroleum Corporation, A-29834 (May 26, 1964) 71 I. D. 206

Where an oil and gas lease is issued which erroneously omits a part of the land applied for which is available for leasing, and the land office simultaneously issues a decision which indicates that the omitted land is included in the lease, the omission will not be construed as a rejection of the offer as to the omitted land from which the offeror must appeal in order to preserve the priority of his offer, but the lease may be amended to include the omitted land notwithstanding the filing of a conflicting offer for the same land subsequent to the issuance of the lease but prior to the discovery of the omission.

Jeanette L. Luse et al., 61 I. D. 103 (1953), distinguished.

Richfield Oil Corporation, A-29937 (June 9, 1964) 71 I. D. 243

Procedures and requirements established in a published notice of availability of lands in Alaska for simultaneous filings of oil and gas lease offers (29 F. R. 3677, Mar. 24, 1964), are mandatory and compliance with them constitutes compliance with the regulations. Protests to such notice and requirements are properly dismissed.

John J. King, Dorothy W. King, Fairbanks 033268, 033279 (Sept. 25, 1964)

OIL AND GAS LEASES--Continued

FIRST QUALIFIED APPLICANT--Continued

Procedures and requirements established in a published notice of availability of lands in Alaska for simultaneous filings of oil and gas lease offers (29 F. R. 3677, Mar. 24, 1964), are mandatory and compliance with them constitutes compliance with the regulations. Protests to such notice and requirements are properly dismissed.

Acreage embraced in lease offers subject to drawing to determine priority is not chargeable against the offerors until the offers have been successfully drawn. Therefore, where a protestant asserts that certain lease offerors filed numerous offers for more than 600,000 acres in the same drawing, in violation of the acreage limitations, and it appears that these offers were successful drawees of 42 leasing blocks for approximately 107,000 acres, the protest will be dismissed as the successful drawees were not thereby in violation of acreage limitations as protested.

Howard L. Anderson, Fairbanks 033093 etc. (Oct. 9, 1964)

Acreage embraced in lease offers subject to drawing to determine priority is not chargeable against the offerors until the offers have been successfully drawn. Therefore, where a protestant asserts that certain lease offerors submitted numerous lease offers for more than 600,000 acres in the same drawing, in violation of the acreage limitations, and it appears that these offerors were successful drawees of 42 leasing blocks for approximately 107,000 acres, the protest will be dismissed as the successful drawees were not thereby in violation of acreage limitations as protested.

W. Carl Dale, Fairbanks 033196 (Oct. 9, 1964)

FUTURE AND FRACTIONAL INTEREST LEASES

An offer to lease a 50 percent fractional mineral interest in acquired land is properly rejected when the offeror shows that he does not own any operating rights in the fractional mineral interest not owned by the United States.

David A. Provinse, A-30162 (July 6, 1964)

KNOWN GEOLOGICAL STRUCTURE

A determination that land is within the undefined known geologic structure of a producing oil or gas field is, in effect, a withdrawal of that land from noncompetitive leasing, and where that determination is reflected by the records of the Bureau of Land Management, the land is unavailable for noncompetitive leasing and must be excluded in determining whether a lease offer complies with the requirements of 43 CFR 192.42(d).

Empire State Oil Company, Jack J. Grynberg, A-29761 (Mar. 6, 1964) 71 I. D. 92

The phrase "known geologic structure of a producing oil and gas field" has been so long understood to include oil and gas fields which once produced and are still capable of production, although not currently producing, that the phrase as used in Rev. Stat. 2276(a)(2) will be considered to have the same meaning, despite the fact that the word "producing" is used in the next paragraph of the statute to mean actual production.

State of Utah, A-29461 et al. (Oct. 30, 1964) 71 I. D. 392

LANDS SUBJECT TO

Lands situated within incorporated cities are not subject to oil and gas leasing under the Mineral Leasing Act for Acquired Lands.

Hugo H. Pyes, A-29875 (Feb. 19, 1964)

An oil and gas lease offer will be rejected when the land applied for had formerly been included in an oil and gas lease terminated by operation of law but had not yet been posted as available for filing at the time the offer was filed.

The fact that a land office has posted a notice in accordance with 43 CFR 192.43(b) describing lands in a lease which terminated by operation of law does not make those lands available for leasing if the notice also states that the lands are not available for leasing.

Union Oil Company of California, A-29904 (Feb. 20, 1964)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

A determination that land is within the undefined known geologic structure of a producing oil or gas field is, in effect, a withdrawal of that land from noncompetitive leasing, and where that determination is reflected by the records of the Bureau of Land Management, the land is unavailable for noncompetitive leasing and must be excluded in determining whether a lease offer complies with the requirements of 43 CFR 192.42(d).

'Available for leasing," as used in 43 CFR 192.42(d) and decisions interpreting that regulation, means lands which are available for noncompetitive leasing under the Mineral Leasing Act.

Empire State Oil Company, Jack J. Grynberg, A-29761 (Mar. 6, 1964) 71 I. D. 92

Lands which are shown by the records of the Bureau of Land Management to be free from any claims to oil and gas deposits are subject to oil and gas leasing, and a lease issued for such deposits is prima facie valid even though there is a possibility of the existence of unpatented mining claims on the lands.

Duncan Miller, A-30005 (Mar. 11, 1964)

It is proper to reject an oil and gas lease offer covering land formerly embraced in a relinquished lease where the relinquishment has been noted on the official records but where the land has not been posted as subject to new lease offers.

Mountain Fuel Supply Company, A-29971 (Mar. 13, 1964)

Oil and gas lease offers describing strips of unsurveyed land which are surrounded by other public land oil and gas leases are improperly rejected where there is no doubt that the strips exist and they are more than 10 chains wide.

Where the historical index for public lands shows that certain lands are unsurveyed and that leases covering them have been issued with a metes and bounds description, the records show not that the lands have been leased by legal subdivision but rather by metes and bounds and that the leases include only the areas described by the metes and bounds description.

Eloise L. Beckwith, A-28967 (May 26, 1964)

An oil and gas lease is improperly issued where the offer includes less than 640 acres and the

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

land applied for is adjoined by land in a lease the fixed term of which has expired, although a partial assignment of that lease has been filed the approval of which will continue the lease for two years.

Duncan Miller, A-30212 (July 13, 1964)

An oil and gas lease offer is properly rejected when it is filed subsequent to the issuance of a public land order revoking a prior order withdrawing the land applied for where the restoration order provides that the land involved shall not be open to applications and offers under the mineral leasing laws until a certain date, which is subsequent to the date of the filing of appellant's offer.

W. W. Priest, A-30232 (July 13, 1964)

An oil and gas lease offer will be rejected when the appellant fails to establish that the lands applied for are public lands of the United States, it appearing that the lands were included in a patent of lands although not specifically described in the patent.

Charles J. Babington, A-30096 (Sept. 10, 1964)

Where an oil and gas lease has been held not to have automatically terminated for failure to pay the annual rental because a discovery of oil and gas on the lease before the end of the lease year had converted it to a minimum royalty status, and thus not subject to automatic termination, and it is later determined that there was not such a discovery, the lease terminates on its anniversary date, and an offer which gained first priority when the leased land was posted, before the land office was informed of the alleged discovery, as available for oil and gas leasing is to be considered on its merits.

Richard M. Ferguson, A-30090 (Sept. 22, 1964)

When the Secretary of the Interior exercises his discretionary authority to issue oil and gas leases or to refrain from doing so by declaring

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

that certain areas of public land reserved for wildlife use are closed to oil and gas leasing because leasing would be incompatible with wildlife use, oil and gas lease offers for land in the closed areas are properly rejected.

Hunt Petroleum Corporation, A-30121 (Sept. 23, 1964)

NONCOMPETITIVE LEASES

An oil and gas lease offer for acquired land filed before the amendment of the Mineral Leasing Act on Sept. 2, 1960, which was still pending at that time, became subject to the act of Sept. 2, 1960, so that the offeror is properly required to consent to the issuance of a lease subject to the terms prescribed by the amendatory act.

Duncan Miller, A-30192 (Apr. 9, 1964)

PRODUCTION

Land in any lease of a unit agreement which is in a participating area is to be considered as land in a producing or producible status so that all lands subject to that lease, whether in the unit or participating area, are not eligible for selection by a State as school indemnity lands.

State of Utah, A-29461 et al. (Oct. 30, 1964)
71 I. D. 392

An oil and gas lease is properly held terminated and a subsequently filed proposed assignment of operating rights properly returned unapproved when it has been determined that a well on the land leased was not a well capable of producing oil or gas in paying quantities as of the date of termination of the lease, so that no notice to the lessee to resume production was necessary prior to declaring the lease to be terminated.

Juniper Oil and Mining Company, A-30181 (Dec. 4, 1964)

L AND GAS LEASES--Continued

PRODUCTION--Continued

A noncompetitive oil and gas lease is properly declared terminated at the expiration of its extended term when it appears that the lessee's claim to a well capable of producing oil or gas in paying quantities rests upon an uncompleted well which was not in a physical condition to produce oil and gas in paying quantities.

Carl Losey et al., A-30153 (Dec. 4, 1964)

REINSTATEMENT

Section 31 of the Mineral Leasing Act, as amended by the act of Oct. 15, 1962, does not authorize the reinstatement of leases which terminate after the effective date of the act of Oct. 15, 1962, for nonpayment of rental.

Duncan Miller, A-30067 (Mar. 12, 1964)

An oil and gas lessee whose lease is declared to be terminated and who fails to appeal from such declaration is not entitled to reinstatement of the lease even if the termination is erroneous when the rights of a subsequent lessee have intervened.

Benson-Montin-Greer Drilling Corp., A-29966 (Mar. 30, 1964)

An oil and gas lease offer is properly denied reinstatement when the offeror fails to comply with the land office requirement for submission of four copies of the offer, as originally filed, within 30 days after receipt of the notice to do so.

Duncan Miller, A-30180 (Apr. 8, 1964)

It is proper to reject a petition for reinstatement of a competitive oil and gas lease which had terminated automatically for failure to pay timely advance rental due for the second lease year in the absence of sufficient showing that the failure was justifiable or not due to a lack of reasonable diligence.

Hunt Oil Company, A-30101 (June 23, 1964)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

There is no authority in this Department to reinstate an oil and gas lease terminated by operation of law for failure to make timely payment of rent, even though the check covering the rent, received after the anniversary date of the lease, has been deposited in the accounts of Department and collected. In such event, the lessee is entitled to the return of the amount paid.

Elwerd M. Rogers, A-30254 (Sept. 24, 1964)

RELINQUISHMENTS

A protest by an offeror against issued for prior-filed offers on charges of an unlawful trust and practices under sec. 27 of the Mineral Leasing Act is properly dismissed when the charges are not adequately detailed with clarity and are not supported by any evidence, and at the most suggest only that the leases were issued to persons who had held previous leases for the lands but had relinquished them and filed the new offers, since such a practice was not prohibited under the act.

Duncan Miller, A-30304 (Dec. 31, 1964)

RENEWALS

Where the holder of a 20-year oil and gas lease has shown that her failure to comply with a regulation specifying that an application for renewal of the lease should be filed at least 90 days prior to the expiration of its term was due to difficult personal circumstances, her delay in filing the renewal application may be excused.

Julia Katherine Moore, Salt Lake 033190(A) (Oct. 20, 1964)

RENTALS

An oil and gas lease is automatically terminated under section 31 of the Mineral Leasing Act, as amended by the act of July 29, 1954, when the rental is not paid in full before the due date even though a payment is made on the due date and the rental deficiency is slight.

OIL AND GAS LEASES--Continued

RENTALS--Continued

Section 31 of the Mineral Leasing Act, as amended by the act of Oct. 15, 1962, does not authorize the reinstatement of leases which terminate after the effective date of the act of Oct. 15, 1962, for nonpayment of rental.

Duncan Miller, A-30067 (Mar. 12, 1964)

Oil and gas lease offers filed under the simultaneous-filing procedure in 43 CFR 192.43, accompanied with personal checks for the advance rental payment, are properly rejected for noncompliance with subdivision (c) of that regulation, in effect when the offers were filed.

Chester F. Merriman, A-30033 (Mar. 23, 1964)

An oil and gas lessee is properly required to pay the accrued rentals on his lease to the end of the lease term even though he was not billed for the rentals during those years and payment may result in some hardship to him.

F. F. Hintze, A-29946 (Mar. 27, 1964)

Termination of an oil and gas lease is required for failure to pay the annual rental in advance on or before Sept. 1, 1963, the anniversary date of a lease on which there is no well capable of producing oil or gas in paying quantities.

Duncan Miller, A-30213 (Apr. 8, 1964)

An oil and gas lease on land within the known geologic structure of a producing gas field which attains a minimum royalty status because of inclusion in the participating area of a producing gas unit but on which there is no producing or producible well and which is subsequently extended as a consequence of the termination of the unit reverts to a rental status and is subject to the automatic termination provision of the act of July 29, 1954.

Murphy Corporation, A-29849 (June 3, 1964)
71 I. D. 233

OIL AND GAS LEASES--Continued

RENTALS--Continued

It is proper to reject a petition for reinstatement of a competitive oil and gas lease which had terminated automatically for failure to pay timely advance rental due for the second lease year in the absence of sufficient showing that the failure was justifiable or not due to a lack of reasonable diligence.

Hunt Oil Company, A-30101 (June 23, 1964)

The annual rental due for the sixth and succeeding years on noncompetitive oil and gas leases in Alaska issued prior to July 3, 1958, and extended thereafter is at the rate of 50 cents per acre per annum.

Colorado Oil and Gas Corporation, A-30003
(July 27, 1964) 71 I. D. 284

Section 10 of the act of July 3, 1958, amending the Alaska Oil Proviso of the Mineral Leasing Act of 1920 to require rentals for noncompetitive oil and gas leases in Alaska to be the same as similar leases for lands elsewhere in the United States, is not applicable to leases which had been granted 5-year extensions prior to the act as to the remainder of their extended term, including a 2-year extension resulting from segregation of the lease by partial assignment under section 30(a) of the Mineral Leasing Act, as amended.

If there are applicable funds available, refund may be made of oil and gas lease rentals paid in excess of that required under the lease and applicable statutes and regulations.

Richfield Oil Corporation Shell Oil Company,
A-30154, A-30223 (July 30, 1964) 71 I. D. 294

Where an oil and gas lease has been held not to have automatically terminated for failure to pay the annual rental because a discovery of oil and gas on the lease before the end of the lease year had converted it to a minimum royalty status, and thus not subject to automatic termination, and it is later determined that there was not such a discovery, the lease terminates on its anniversary date, and an offer which gained first priority when the leased land was posted, before the land office was informed of the alleged discovery, as available for oil and gas leasing is to be considered on its merits.

Richard M. Ferguson, A-30090 (Sept. 22, 1964)

RENTALS--Continued

In order for an oil and gas lessee to be entitled to suspension of payment of rental and the running of time of his lease under the provisions of section 17 of the Mineral Leasing Act, there must be a verified statement filed by a mining claimant under section 7(c) of the Multiple Mineral Development Act of 1954, and neither the payment of rental nor the running of time may be suspended upon a mere allegation that there may be mineral claims adverse to the interest of the oil and gas lessee.

Termination of an oil and gas lease subject to the act of July 29, 1954, is required for failure to pay the annual rental in advance on or before the anniversary date of a lease on which there is no well capable of producing oil or gas in paying quantities.

Duncan Miller, A-30122 (Sept. 23, 1964)

Termination of an oil and gas lease subject to the act of July 29, 1954, is required for failure to pay the annual rental in advance not later than the anniversary date of the lease, or, in the event that the land office is not open on the anniversary date, on the next official working day; actual receipt in the land office of the rental payment is required within the time stated.

Elwerd M. Rogers, A-30254 (Sept. 24, 1964)

An oil and gas lease which converts to a minimum royalty basis during its primary term because of the discovery on it of oil and gas in paying quantities remains in a minimum royalty status even though production ceases and the part of it which had been put in a known geologic structure is reclassified as not within a known geologic structure, but it reverts back to a rental basis if the lease is extended for a five-year period.

Where an office of the General Accounting Office, after an audit, requests the local land office to demand minimum royalty payments from a lessee for seven years of an extended oil and gas lease term and, upon appeal, the Comptroller General decides that only annual rentals paid by the lessee were due, the Department will not require the lessee to make any additional payments for the extended term.

Elliott, Inc., A-29816 (Sept. 28, 1964)
71 I.D.

RENTALS--Continued

The holders of noncompetitive oil and gas leases on public land in Alaska issued before July 3, 1958, and extended thereafter are properly required to pay annual rental of 50 cents per acre for the sixth and successive years of the extended lease term.

Kenneth J. Kadow et al., A-30053 (Oct. 5, 1964)

ROYALTIES

An oil and gas lease on land within the known geologic structure of a producing gas field which attains a minimum royalty status because of inclusion in the participating area of a producing gas unit but on which there is no producing or producible well and which is subsequently extended as a consequence of the termination of the unit reverts to a rental status and is subject to the automatic termination provision of the act of July 29, 1954.

Murphy Corporation, A-29849 (June 3, 1964)
71 I.D. 233

Royalties on gas production from public land subject to oil and gas leases issued under the Mineral Leasing Act, as amended, are properly computed on the price of the gas fixed in a contract of sale of the gas and no deduction is allowable for a charge imposed by the contract upon the lessee-seller for the cost of compressing the gas to a higher pressure than that at which the gas is delivered to the buyer notwithstanding that the compression takes place after title has passed to the buyer upon delivery to its collecting system and the gas has been commingled with gas purchased from other producers.

Big Piney Oil and Gas Company, A-29895 (July 27, 1964)

Where an oil and gas lease has been held not to have automatically terminated for failure to pay the annual rental because a discovery of oil and gas on the lease before the end of the lease year had converted it to a minimum royalty status, and thus not subject to automatic termination, and it is later determined that there was not such a discovery, the lease terminates on its anniversary date, and an offer which gained first priority when the leased land was posted, before the land office was informed

OIL AND GAS LEASES--Continued

ROYALTIES--Continued

of the alleged discovery, as available for oil and gas leasing is to be considered on its merits.

Richard M. Ferguson, A-30090 (Sept. 22, 1964)

An oil and gas lease which converts to a minimum royalty basis during its primary term because of the discovery on it of oil and gas in paying quantities remains in a minimum royalty status even though production ceases and the part of it which had been put in a known geologic structure is reclassified as not within a known geologic structure, but it reverts back to a rental basis if the lease is extended for a five-year period.

Where an office of the General Accounting Office, after an audit, requests the local land office to demand minimum royalty payments from a lessee for seven years of an extended oil and gas lease term and, upon appeal, the Comptroller General decides that only annual rentals paid by the lessee were due, the Department will not require the lessee to make any additional payments for the extended term.

Elliott, Inc., A-29816 (Sept. 28, 1964)
71 I.D.

640-ACRE LIMITATION

A determination that land is within the undefined known geologic structure of a producing oil or gas field is, in effect, a withdrawal of that land from noncompetitive leasing, and where that determination is reflected by the records of the Bureau of Land Management, the land is unavailable for noncompetitive leasing and must be excluded in determining whether a lease offer complies with the requirements of 43 CFR 192.42(d).

"Available for leasing," as used in 43 CFR 192.42(d) and decisions interpreting that regulation, means lands which are available for noncompetitive leasing under the Mineral Leasing Act.

Empire State Oil Company, Jack J. Grynberg, A-29761 (Mar. 6, 1964) 71 I.D. 92

An oil and gas lease is improperly issued where the offer includes less than 640 acres and the land applied for is adjoined by land in a lease the fixed term of which has expired, although a partial assignment of that lease has been filed the approval of which will continue the lease for two years.

Duncan Miller, A-30212 (July 13, 1964)

OIL AND GAS LEASES--Continued

SIX-MILE SQUARE RULE

An oil and gas lease offer which describes land within an area over six miles in width and within an area covering five whole sections and parts of two end sections in width does not comply with the regulation requiring that land sought for leasing must be within an area six miles square or within an area not exceeding six surveyed sections in length or width, and a lease issued in response to such offer is improperly issued and subject to cancellation if proper junior offers have been filed for the land.

Hugh E. Pipkin et al., A-30021 (Mar. 4, 1964)
71 I.D. 89

TERMINATION

An oil and gas lease is automatically terminated under section 31 of the Mineral Leasing A as amended by the act of July 29, 1954, when the rental is not paid in full before the due date even though a payment is made on the due date and the rental deficiency is slight.

Section 31 of the Mineral Leasing Act, as amen by the act of Oct. 15, 1962, does not authori the reinstatement of leases which terminate after the effective date of the act of Oct. 15, 1962, for nonpayment of rental.

Duncan Miller, A-30067 (Mar. 12, 1964)

An oil and gas lssee whose lease is declared to be terminated and who fails to appeal from the decision declaring the termination loses his rights in the lease.

Benson-Montin-Greer Drilling Corp., A-29966 (Mar. 30, 1964)

Termination of an oil and gas lease is required for failure to pay the annual rental in advance on or before Sept. 1, 1963, the anniversary date of a lease on which there is no well capable of producing oil or gas in paying quantities.

Duncan Miller, A-30213 (Apr. 8, 1964)

OIL AND GAS LEASES--Continued

TERMINATION--Continued

An oil and gas lease on land within the known geologic structure of a producing gas field which attains a minimum royalty status because of inclusion in the participating area of a producing gas unit but on which there is no producing or producible well and which is subsequently extended as a consequence of the termination of the unit reverts to a rental status and is subject to the automatic termination provision of the act of July 29, 1954.

Murphy Corporation, A-29849 (June 3, 1964)
71 I.D. 233

It is proper to reject a petition for reinstatement of a competitive oil and gas lease which had terminated automatically for failure to pay timely advance rental due for the second lease year in the absence of sufficient showing that the failure was justifiable or not due to a lack of reasonable diligence.

Hunt Oil Company, A-30101 (June 23, 1964)

Where an oil and gas lease has been held not to have automatically terminated for failure to pay the annual rental because a discovery of oil and gas on the lease before the end of the lease year had converted it to a minimum royalty status, and thus not subject to automatic termination, and it is later determined that there was not such a discovery, the lease terminates on its anniversary date, and an offer which gained first priority when the leased land was posted, before the land office was informed of the alleged discovery, as available for oil and gas leasing is to be considered on its merits.

Richard M. Ferguson, A-30090 (Sept. 22, 1964)

In order for an oil and gas lessee to be entitled to suspension of payment of rental and the running of time of his lease under the provisions of section 17 of the Mineral Leasing Act, there must be a verified statement filed by a mining claimant under section 7(c) of the Multiple Mineral Development Act of 1954, and neither the payment of rental nor the running of time may be suspended upon a mere allegation that there may be mineral claims adverse to the interest of the oil and gas lessee.

OIL AND GAS LEASES--Continued

TERMINATION--Continued

Termination of an oil and gas lease subject to the act of July 29, 1954, is required for failure to pay the annual rental in advance on or before the anniversary date of a lease on which there is no well capable of producing oil or gas in paying quantities.

Duncan Miller, A-30122 (Sept. 23, 1964)

Termination of an oil and gas lease subject to the act of July 29, 1954, is required for failure to pay the annual rental in advance not later than the anniversary date of the lease, or, in the event that the land office is not open on the anniversary date, on the next official working day; actual receipt in the land office of the rental payment is required within the time stated.

Elwerd M. Rogers, A-30254 (Sept. 24, 1964)

A noncompetitive oil and gas lease is properly declared terminated at the expiration of its extended term when it appears that the lessee's claim to a well capable of producing oil or gas in paying quantities rests upon an uncompleted well which was not in a physical condition to produce oil and gas in paying quantities.

Carl Losey et al., A-30153 (Dec. 4, 1964)

Where an assignment of operating rights in a lease is made after the apparent termination date of a lease, it is questionable whether the assignee has any standing to question a determination that the lease had in fact terminated when neither the lessee nor the assignor of the operating rights questions the determination.

An oil and gas lease is properly held terminated and a subsequently filed proposed assignment of operating rights properly returned unapproved when it has been determined that a well on the land leased was not a well capable of producing oil or gas in paying quantities as of the date of termination of the lease, so that no notice to the lessee to resume production was necessary prior to declaring the lease to be terminated.

Juniper Oil and Mining Company, A-30181
(Dec. 4, 1964)

OIL AND GAS LEASES--Continued

UNIT AND COOPERATIVE AGREEMENTS

An oil and gas lease on land within the known geologic structure of a producing gas field which attains a minimum royalty status because of inclusion in the participating area of a producing gas unit but on which there is no producing or producible well and which is subsequently extended as a consequence of the termination of the unit reverts to a rental status and is subject to the automatic termination provision of the act of July 29, 1954.

Murphy Corporation, A-29849 (June 3, 1964)
71 I. D. 233

Land in any lease of a unit agreement which is in a participating area is to be considered as land in a producing or producible status so that all lands subject to that lease, whether in the unit or participating area, are not eligible for selection by a State as school indemnity lands.

State of Utah, A-29461 et al, (Oct. 30, 1964)
71 I. D. 392

PATENTS OF PUBLIC LANDS

GENERALLY

The Department of the Interior is without authority to issue a patent for land that was patented to the State of Mississippi in 1895 under the terms of the Swampland Act of 1850.

Jackson County Board of Supervisors, A-30078
(May 13, 1964)

Where public land has been patented, this Department has no further jurisdiction over it.

The Dredge Corporation, A-29997 (June 15, 1964)

PATENTS OF PUBLIC LANDS--Continued

GENERALLY--Continued

Where Director of Bureau of Land Management has issued patent conveying interests in surplus Fort Peck Indian Reservation lands, the Secretary of the Interior, unless specifically authorized by Congress, has no jurisdiction to entertain an appeal from the Director's action brought by Fort Peck Tribes on ground that patent was illegally issued, the sole remedy where issuance of a patent has been the result of fraud or mistake being a suit for cancellation in a court of proper jurisdiction.

Fort Peck Tribes v. Nordwick, IA-869
(Dec. 1, 1964)

AMENDMENTS

The Department of the Interior cannot amend a patent to include land that was patented to the State of Mississippi in 1895 under the terms of the Swampland Act of 1850.

Jackson County Board of Supervisors, A-30124
(May 13, 1964)

An application to amend a land patent issued in 1847 is properly rejected where the purchaser has received all the land purchased and the description of the land in the patent conforms with the approved plat of survey.

Charles M. Noble, Jr., A-29871 (Sept. 9, 1964)

EFFECT

A patent is the highest evidence of title and is conclusive as against the United States until it is set aside or annulled by some judicial tribunal.

Jackson County Board of Supervisors, A-30078
(May 13, 1964)

A patent is the highest evidence of title and is conclusive as against the United States until it is set aside or annulled by some judicial tribunal.

Jackson County Board of Supervisors, A-30124
(May 13, 1964)

An oil and gas lease offer will be rejected when the appellant fails to establish that the lands applied for are public lands of the United States, it appearing that the lands were included in a patent of lands although not specifically described in the patent.

Charles J. Babington, A-30096 (Sept. 10, 1964)

PATENTS OF PUBLIC LANDS--Continued

RESERVATIONS

A patent of land under the Small Tract Act is subject to an existing public highway right-of-way within the provisions of sec. 2477 of the Revised Statutes regardless of the absence of a reservation for the right-of-way in the patent; therefore, a reservation for an existing public highway need not be made in a patent for a small tract and a protest against issuance of a patent for that reason is properly dismissed and the question of whether a road is a public highway left for determination in the State courts.

Alfred E. Koenig, A-30139 (Nov. 25, 1964)

SUITS TO CANCEL

The Secretary of the Interior will not recommend that the Attorney General institute suit to cancel a patent where the record does not justify such action and where more than six years have elapsed since the patent was issued.

Jackson County Board of Supervisors, A-30078 (May 13, 1964)

The Secretary of the Interior will not recommend that the Attorney General institute a suit to cancel a patent where the record does not justify such action and where more than six years have elapsed since the patent was issued.

Jackson County Board of Supervisors, A-30124 (May 13, 1964)

The Department of the Interior will not recommend that a suit to set aside small tract patents be instituted, when a request to do so is made, where no Government interest is involved and where the Government is under no duty to the one who may have suffered by the issuance of the patent.

Absent fraud no action to cancel a patent issued for public land can be instituted more than 6 years after issuance of the patent.

The Dredge Corporation, A-29997 (June 15, 1964)

PHOSPHATE LEASES AND PERMITS

PERMITS

This Department is not authorized to issue phosphate prospecting permits covering land where phosphate deposits are known to exist in workable quantities.

John D. Archer, Elizabeth B. Archer, A-29974 (June 16, 1964)

An application for a phosphate prospecting permit is properly rejected when information is available as to the existence and workability of phosphate deposits in the land; it is not necessary that detailed information be available which permits a determination of the economic feasibility of a commercial venture.

Elizabeth B. Archer, A-30024 (June 17, 1964)

POTASSIUM LEASES AND PERMITS

PERMITS

A potassium prospecting permit issued for a period of two years expires, in the absence of statutory provision for extension, at the close of the second anniversary of the date on which it was issued, and applications for permits on the land in the permit, filed on the last day of the permit, must be rejected.

Richard Minasian et al., A-29770, A-29870 (Jan. 14, 1964)

POWER

GENERALLY

An agreement providing for the delivery by one party of a quantity of power which cannot, with certainty, be determined in return for the delivery by the other party of stated amounts of power over the same period constitutes a power-for-power exchange agreement.

The advantages at federal hydroelectric projects to be realized from implementing the "Treaty between Canada and the United States of America relating to cooperative development of the water resources of the Columbia River basin," through the execution of exchange agreements support, as a matter of law, the Bonneville Power Administrator's determination of "economical operation" as required by section 14 of the Reclamation Project Act of 1939 (53 Stat. 1197, 43 U.S.C. 389) and section 5(b) of the Bonneville Project Act (50 Stat. 734, 16 U.S.C. 832d(b))

Canadian Entitlement Exchange Agreements, M-36669 (July 20, 1964) 71 I.D.315

An applicant for an amended transmission line right-of-way under the act of March 4, 1911, is properly required to file the stipulation required by the Department's regulations agreeing to permit the Department to utilize surplus capacity in the line or to increase the capacity of the line for the transmission of power by the Department.

Southern California Edison Company, A-30325 (Nov. 3, 1964) 71 I.D. 405

The requirement imposed by the Department's regulations on an applicant for a transmission line right-of-way that he agree to permit the Department to utilize surplus capacity in the line or to increase the capacity of the line for the transmission of power by the Department is valid.

The existence of a contract between a power company and the United States, acting through the Atomic Energy Commission, whereby the company agrees to construct a transmission line from its facilities to facilities of the Commission and the Commission agrees to provide a right-of-way across land under its jurisdiction in Los Alamos County, has no bearing upon and is not affected by conditions imposed by this Department upon a grant of a right-of-way for a portion of the line across public land under the jurisdiction of this Department in Sandoval County.

Public Service Company of New Mexico, New Mexico 0554658 (Nov. 10, 1964) 71 I.D. 427

PRACTICE BEFORE THE DEPARTMENT

GENERALLY

Where a Government contest against a mining claim names four individuals as contestees, two of the contestees file an answer requesting a hearing, an attorney files an answer purporting to be on behalf of all the contestees, notice of the hearing is served only on the attorney and none of the contestees or the attorney appears at the hearing and the claim is declared null and void, the decision will be set aside and the case remanded for another hearing where the two contestees who filed an answer submit affidavits that the attorney did not represent them and they did not hold him out as representing them.

United States v. Don Brunkalla et al., A-30231 (Dec. 29, 1964)

PRIVATE EXCHANGES

GENERALLY

An application for a private exchange under the Taylor Grazing Act, which is to be rejected, will not be transferred to the Department of Agriculture for consideration as an application for a forest exchange under the act of Mar. 20, 1922, as amended, where the selected lands are not within the boundaries of a national forest since the 1922 act does not apply to such exchanges.

Chris H. Gansberg, Executor of the Fred Gansberg Estate, A-29830 (Jan. 30, 1964)

Section 8(b) of the Taylor Grazing Act authorizes an exchange of private land in one State for public land in another State only if the selected land is within a distance of not more than 50 miles within the adjoining State nearest the base lands, and the Department is without authority to approve an exchange of lands that does not meet this requirement even though such an exchange may appear to be in the public interest.

Burnis J. Sharp, A-30160 (May 8, 1964)

IVATE EXCHANGES--Continued

CLASSIFICATION

An application for private exchange is properly rejected when a comprehensive study and the development of a detailed management disposition plan for the area indicates that the selected land should be retained in public ownership to be managed on a long-term basis for multiple public uses which include watershed protection, timber, and recreation and public purpose sites.

Chris H. Gansberg, Executor of the Fred Gansberg Estate, A-29830 (Jan. 30, 1964)

PROTESTS

Protests to the consummation of an exchange are properly dismissed where it is shown that the acquisition of the offered lands is advantageous to the United States and is in the public interes in that it will result in a consolidation of holdings, improvement of access to other Government lands, the enhancement of timber production and other multiple uses, and the selected lands are isolated and offer only limited use for grazing.

Merton and Betty Bradshaw et al., Cascade Ranches, Inc., Oregon 013440 and 013441 (Aug. 7, 1964)

PUBLIC INTEREST

Action on a proposed private exchange will be suspended until it can be determined whether the public interest dictates that the exchange should be consummated either in whole or in part.

Dan Filippini, A-29089 (Jan. 21, 1964)

An application for private exchange is properly rejected when a comprehensive study and the development of a detailed management disposition plan for the area indicates that the selected land should be retained in public ownership to be managed on a long-term basis for multiple public uses which include watershed protection, timber, and recreation and public purpose sites.

Chris H. Gansberg, Executor of the Fred Gansberg Estate, A-29830 (Jan. 30, 1964)

PRIVATE EXCHANGES--Continued

PUBLIC INTEREST--Continued

Section 8(b) of the Taylor Grazing Act authorizes an exchange of private land in one State for public land in another State only if the selected land is within a distance of not more than 50 miles within the adjoining State nearest the base lands, and the Department is without authority to approve an exchange of lands that does not meet this requirement even though such an exchange may appear to be in the public interest.

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Protests to the consummation of an exchange are properly dismissed where it is shown that the acquisition of the offered lands is advantageous to the United States and is in the public interes in that it will result in a consolidation of holdings, improvement of access to other Government lands, the enhancement of timber production and other multiple uses, and the selected lands are isolated and offer only limited use for grazing.

Merton and Betty Bradshaw et al., Cascade Ranches, Inc., Oregon 013440 and 013441 (Aug. 7, 1964)

A private exchange application will be rejected when approval is not in the public interest because acquisition of the offered land would only add land to an already substantially isolated tract of public land, would not improve the public land pattern or facilitate the administration of the public lands in the area, and the Bureau of Land Management needs the selected land as an administrative site.

John R. Ross et al., A-27259 (Mar. 12, 1956), set aside in part.

Robert C. and Mary V. Ellis, A-29185 (Sept. 9, 1964)

PUBLIC LANDS

GENERALLY

A homestead application will be rejected when the land applied for is not subject to disposition because it is not publicly owned land, having been washed away by erosion.

Henry E. Schemmel, Harold Eugene Feese, A-29906 (Feb. 20, 1964)

An application for patent, based upon a private land claim under the act of Mar. 3, 1807, is properly rejected where no evidence is found that the claim was ever located and satisfied by land in place, and the record shows that Surveyor General's Certificates of Location were issued in full satisfaction of the claim, and the certificates were thereafter located on lands for which patents have since been issued.

Texaco, Inc., et al., A-29893 (May 13, 1964)

APPRAISAL

Where a small tract is classified for direct sale to an applicant, he has a preference right to purchase the tract at the fair market value established therefor, but if the applicant disputes the appraised value established for the tract, he has the burden of proving that the appraisal is erroneous.

Dolores E. DeArman, Arizona 014071 (Sept. 23, 1964)

CLASSIFICATION

State selections in satisfaction of a legislative grant of public land are preferred over conflicting private applications even though the State application may have been filed subsequent to the private application if the interval between the two filings is not so great as to indicate that the State failed to exercise reasonable diligence in exercising its selection right.

The filing of a State selection application within six weeks after the filing of public sale applications for the same land evidences reasonable diligence by the State in the exercise of its selection right so that the State application merits consideration with the public sale applications and allowance unless such allowance would serve the public interest less effectively than allowance of the public sale applications.

Atherton Sinclair Burlingham et al., A-30118 (Apr. 16, 1964) 71 I.D. 126

PUBLIC LANDS--Continued

CLASSIFICATION--Continued

The classification of land as suitable for disposition under the Small Tract Act does not preclude a subsequent cancellation of that classification when a different classification is found to be in the public interest.

Cecil W. Hinshaw, A-30006 (July 23, 1964)

DISPOSALS OF

The statutory grant of a 6-month preference period for the filing of State selection applications after every revocation of a withdrawal of public land within 10 years after Aug. 27, 1958, is entirely consistent with the existent departmental policy of permitting the public interest in the satisfaction of a legislative grant of public land to a State to tip the scales in favor of the State in the Department's consideration of a State selection application and a conflicting application for the initiation of private rights in the land.

Atherton Sinclair Burlingham et al., A-30118 (Apr. 16, 1964) 71 I.D. 126

It is proper to dismiss a protest against the sale of public land, based on alleged ownership of the land in the protestant, where the protestant fails to prove his ownership of the land.

In the absence of an application to purchase public land under the Color of Title Act, this Department has no authority to appraise land for disposition under that act.

Estate of Herman C. Erling et al., A-29941 (Aug. 5, 1964)

An application to purchase land under the act of Mar. 3, 1909, is properly rejected when on Mar. 3, 1909, the land applied for was not vacant, unappropriated and unentered, or did not abut entered or patented land, or abutted land granted to the State of California as a school section.

Harold J. and Raymond J. Hansen, A-30060 (Sept. 9, 1964)

PUBLIC LANDS--Continued

JURISDICTION OVER

By general statutory provisions the execution of the laws regulating the acquisition of rights in the public lands and the general care of these lands is confided to the land department as a special tribunal; and the Secretary of the Interior, as the head of the department, is charged with seeing that this authority is rightly exercised to the end that valid claims may be recognized, invalid ones eliminated, and the rights of the public preserved.

Feather River Railway Company, Sacramento
013803 (Nov. 5, 1964) 71 I. D. 415

LEASES AND PERMITS

When, after partial rejection of an application for renewal of an airport lease on public land, the Federal Aviation Agency indicates its willingness to allow a more extended coverage than indicated in the recommendation upon which the partial rejection was based, the case will be remanded for a determination of the land to be covered by the renewal in a meeting of representatives of the Bureau of Land Management, the applicant and the Federal Avaiation Agency.

Board of County Commissioners, White Pine County, Nevada, A-29738 (Jan. 14, 1964)

A tramroad right-of-way permit granted under the Act of January 21, 1895, as amended, 43 USC., sec. 956 (1958), is revocable at the discretion of the Secretary.

Feather River Railway Company, Sacramento
013803 (Nov. 5, 1964) 71 I. D. 415

PUBLIC RECORDS

Where the historical index for public lands shows that certain lands are unsurveyed and that leases covering them have been issued with a metes and bounds description, the records show not that the lands have been leased by legal subdivison but rather by metes and bounds and that the leases include only the areas described by the metes and bounds description.

Eloise L. Beckwith, A-28967 (May 26, 1964)

PUBLIC RECORDS--Continued

Final determinations concerning the disclosure to contractors of records that the custodian of the records is unwilling to produce are, as a matter of general practice, made by the Solicitor where the disclosure sought is not connected with any pending contract appeal, and by the Board of Contract Appeals where the records are sought in connection with a pending contract appeal.

The phrase "prejudicial to the interests of the Government," as used in the statutes and regulations pertaining to disclosure of records of the Department of the Interior, ordinarily comprehends those documents as to which the Government possesses a privilege against disclosure under the law of evidence.

The question of whether particular documents, sought by a contractor for use in connection with a contract appeal, are within or without the scope of the Government's privilege against disclosure is a question that calls for the evaluation of such factors as: (1) the relevancy of the documents to the subject matter involved in the appeal; (2) the necessity of the documents for the proving of the appellant's case; (3) the seriousness of the danger to the public interests which disclosure of the documents would involve; (4) the presence in the documents of factual data, on the one hand, or of policy opinions, on the other; (5) the existence of confidential relationships which disclosure of the documents might unduly impair; and (6) the normal desirability of full disclosure of all facts in the possession of either party to the appeal.

Appeal of Vitro Corporation of America,
IBCA-376 (Aug. 6, 1964) 71 I. D. 301

PUBLIC SALES

GENERALLY

It is proper to vacate a sale of public land where, prior to the issuance of a cash certificate, the land is classified pursuant to section 7 of the Taylor Grazing Act for retention in Federal ownership.

Violet M. Brown, A-29019 (Jan. 9, 1964)

Where, prior to the issuance of a cash certificate, a public sale was vacated on the ground that the sale did not accord with a subsequently announced departmental policy and where that policy has been superseded by a broader policy which requires that the Government receive full value for its property, the vacation of the sale will stand where the record shows that both the appraised value at which the land was offered and the amount of the high bid were less than the fair market value of the land at the date of the sale.

Albert Meeks and Helen Louise Meeks, A-29366 (Jan. 9, 1964)

Land valuable for gold is not subject to public sale.

Mrs. Marion E. Beresford, A-30015 (Apr. 6, 1964)

A public sale is properly vacated and public sale applications rejected when the appraised value of the land and the high bid at the sale do not reflect the fair market value of the land as of the date of the sale.

Myron J. Nelson et al., A-30069 (June 1, 1964)

A sale of public land will be vacated where, prior to the issuance of a cash certificate, it is determined that all but one subdivision of the land involved in the sale is needed for a wildlife management area and the remaining tract is so connected to other public land that its transfer to private ownership would not benefit the use and administration of other public land or the public interest.

Mr. and Mrs. Virl E. Winder, Mr. and Mrs. Vernon Russell Allred, A-29682 (June 18, 1964)

PUBLIC SALES--Continued

GENERALLY--Continued

It is proper to vacate a public sale of land when the appraised value of the land and the high bids received at the sale did not reflect the fair market value of the land as of the date of the sale.

Glen Briggs, A-30272 (Sept. 10, 1964)

Where a public sale application has been rejected for the reason that the lands applied for, shown by an 1873 survey as riparian land on the north bank of the Canadian River, are now submerged by the river, but the latest survey information is 14 years old and there is a possibility that subsequent changes of the river have caused all or part of the submerged lands to reappear as fast land on the north bank of the river, the case will be remanded for determination of the present facts and for further consideration of the application in light of the determined facts.

Verner V. Parker, A-30123 (Oct. 2, 1964)

A public sale is properly vacated and a public sale application rejected when it is determined subsequent to the sale that the land should be retained in Federal ownership for possible recreational use.

A public sale may be canceled prior to the issuance of a cash certificate where it is determined that the land has possible value for recreational purposes, and it is not essential that a positive finding of value for such purposes be made.

John W. Spencer, A-30166 (Dec. 18, 1964)

AWARD OF LANDS

When two preference-right claimants exist for a single subdivision of land offered at public sale and one has appealed the possible award of the land to the other, and subsequent to the appeal the claimants submit an agreement for the division of the land between them, the appeal will be dismissed and the case remanded for further appropriate action in light of the agreement.

Alfred A. Gregory Wilshire Management Company, Inc., A-30187 (July 30, 1964)

PUBLIC SALES--Continued

CLASSIFICATION

It is proper to vacate a sale of public land where, prior to the issuance of a cash certificate, the land is classified pursuant to section 7 of the Taylor Grazing Act for retention in Federal ownership.

Violet M. Brown, A-29019 (Jan. 9, 1964)

An application for public sale is properly rejected when it appears that the proposed sale would markedly reduce the operations of adjacent grazing lessees so that their leases would be almost without value and, while, not significantly reducing the responsibility of the Bureau of Land Management in the area, would, nevertheless, by fragmenting the public lands make administration much more difficult.

William J. Rose, A-29551 (Mar. 3, 1964)

An application for public sale is properly rejected when the land is properly classified as not mountainous or too rough for cultivation, as required by the public sale law, and such rejection will not be reversed in the absence of substantial and persuasive evidence that the information as to the physical characteristics of the land upon which it is based is erroneous.

Arndel Corporation, A-29165 (May 7, 1964)

Rejection of an application for public sale of land on the ground that the land is not mountainous or too rough for cultivation will be sustained in the absence of substantial and persuasive evidence that the classification of the land is erroneous.

Lawrence R. Hawley, A-29187 (May 7, 1964)

A public sale application will be rejected when it is determined that the land applied for should be retained in public ownership for recreation and other public purposes.

Marie Caldwell, A-28101 (December 1, 1959), vacated in part.

Marie Caldwell, A-29632 (May 26, 1964)

PUBLIC SALES--Continued

CLASSIFICATION--Continued

It is proper to dispose of an isolated tract of public land at public auction where such disposal would be more in the public interest than disposing of the land through the medium of the desert land laws, even though the land may be classified as suitable for agricultural development.

Beatrice L. Moore, Emma L. Richardson, Idaho 013536, 013537 (Sept. 30, 1964)

A public sale is properly vacated and a public sale application rejected when it is determined subsequent to the sale that the land should be retained in Federal ownership for possible recreational use.

John W. Spencer, A-30166 (Dec. 18, 1964)

ISOLATED TRACTS

It is proper to dispose of an isolated tract of public land at public auction where such disposal would be more in the public interest than disposing of the land through the medium of the desert land laws, even though the land may be classified as suitable for agricultural development.

Beatrice L. Moore, Emma L. Richardson, Idaho 013536, 013537 (Sept. 30, 1964)

PREFERENCE RIGHTS

The owner of land contiguous to land offered for public sale does not thereby acquire any right in the land; he is given only a preference right over other applicants, not owning contiguous land, to buy the land if the Secretary determines to sell it at a public sale.

Albert Meeks and Helen Louise Meeks, A-29366 (Jan. 9, 1964)

A preference-right offer to match the highest bid on public land offered for sale at auction which is not supported by proper proof of the ownership of contiguous land within the 30-day period allowed for the submission of such proof is properly rejected and an award made to the highest bidder.

PUBLIC SALES--Continued

PREFERENCE RIGHTS--Continued

The rule of practice granting a 10-day grace period for filing documents required to perfect an appeal does not apply to the filing of proof of owners of contiguous land to support a preference-right claim at a public sale.

Lyndell Williams, A-29873 (Feb. 17, 1964)

One who fails to submit satisfactory evidence of his ownership of contiguous land within 30 days after the date of a public sale loses his preference right to purchase the land.

Where the owner of land contiguous to an isolated tract of public land offered for sale properly asserts a preference right to purchase the land, and then disposes of the contiguous land after the close of the period allowed for the assertion of preference-right claims and before he receive a cash certificate or patent for the isolated tract, he does not thereby lose his preference right to buy the isolated tract nor does his successor in title succeed to that preference right.

Where preference-right claimants fail to reimburse the applicant for a public sale for the costs of publication within the 10-day period after they are declared the purchasers or to file statements of citizenship, as provided by the Department's regulations, their bid is properly rejected and the land is properly awarded to the applicant.

Otto and Delena Delmoe, Charles Andreas, A-29939 (Feb. 18, 1964) 71 I. D. 56

A preference-right claimant who submits as evidence of his ownership of contiguous land within 30 days after the date of a public sale a certificate by a title company showing only that he was the owner of adjoining land as of a date preceding the date of the sale loses his preference right to purchase the land, and it is immaterial that the certificate was in error and that he was in fact the owner of the adjoining land during the 30-day period following the sale.

Esther C. Drake, A-30246 (July 13, 1964)

A preference-right claimant who submits as evidence of his ownership of contiguous land within 30 days after the date of a public sale a certificate by a title company showing only that he was the owner of adjoining land as of a date preceding the date of the sale loses his preference

PUBLIC SALES--Continued

PREFERENCE RIGHTS--Continued

right to purchase the land, and it is immaterial that the certificate was in error and that he was in fact the owner of the adjoining land during the 30-day period following the sale.

Esther C. Drake, A-30246 (July 13, 1964)

The preference right of a contiguous land owner to purchase land offered at public sale is not defeated by a showing that the preference right claimant has entered into a contract which conveys a "security interest" in his property and which provides that such interest is to be released upon the payment of a specified sum, where the contract does not further define the interest conveyed, leaves possession and all control over the property in the owner, and makes no provision for proceeding against the property in case of default.

Brent L. Sellick, A-30007 (Oct. 5, 1964)

SALES UNDER SPECIAL STATUTES

Where an application for the sale of land under the act of Aug. 3, 1955, has been rejected on the ground that the applicant has not been the lawful occupant of the land sought for the required time, and it appears that the applicant was probably based, not on occupancy of the land sought, but on ownership of contiguous land, the case will be remanded for further consideration in light of a subsequent sale of the land at which the applicant appears to have bid.

Leo Davidson, A-30171 (Apr. 21, 1964)

Where a preference right to purchase land in Oklahoma under section 2(b) of the act of Aug. 3, 1955, is rejected because of lack of evidence of continuous and lawful occupancy of the land by the claimant or his predecessors in interest for home, business, or school purposes since Apr. 30, 1949, or earlier, and on appeal it appears that such occupancy may have existed, the case will be remanded to permit the applicant to submit evidence of such occupancy.

Gladys S. Myers, A-30167 (Apr. 21, 1964)

RAILROAD GRANT LANDS

The period for determination by the Department of the Interior whether public land included within the primary limits of a legislative grant in aid of the construction of a railroad which excepts mineral land is mineral in character extends to the time of issuance of patent to the railroad company.

Land known to be mineral in character at the time of definite location of a railroad are excluded from the grant of place lands to the railroad even though the lands may later lose their mineral character.

Pursuant to section 321(b) of the Transportation Act of 1940 patent may be issued for railroad grant lands sold by the railroad if it is determined either (1) that the land was not mineral in character at the time of the sale and the purchaser was an innocent purchaser for value, even though the land is subsequently determined to be mineral in character, or (2) that although the land was mineral in character at the time of the sale the purchaser was not chargeable with actual or constructive notice of that fact.

When the Department of the Interior finds that public land within the place limits of a legislative grant in aid of the construction of a railroad is mineral in character and the railroad company challenges such finding, a hearing should be granted at which the Department has the obligation of making a prima facie case of mineral character whereupon the company has the burden of establishing nonmineral character by a preponderance of the evidence.

To establish the mineral character of railroad grant land it must be shown that known conditions on the critical date are such as reasonably to engender the belief that the land contains mineral of such quality and in such quantity as to render its extraction profitable and justify expenditures to that end.

Southern Pacific Company, A-29736 et al. (May 27, 1964) 71 I. D. 224

RECLAMATION HOMESTEADS

GENERALLY

If the period for filing final proof on a reclamation homestead entry has expired, there is no authority for granting an extension of time to

RECLAMATION HOMESTEADS--Continued

GENERALLY--Continued

permit the entryman to build a habitable house upon the entry as required for making satisfactory final proof; nor is the entryman's failure to obtain a loan to build the house because of a private contest initiated against the claim a sufficient basis for invoking equitable adjudication, since his efforts were only attempts at compliance with the homestead requirements and cannot be considered as "substantially" complying with the law, as required before equitable adjudication may be granted.

James E. Walter, A-30120 (Nov. 20, 1964)

CANCELLATION

Evidence which shows that at most a homestead **entryman spent** several nights a week on his **entry for seven** months of each of three years **while he assisted** and directed a resident hired **man in the** development and cultivation of a **homestead** entry and while he maintained his **family in the** family home and supervised and controlled **his** lumber and building construction **businesses** 45 miles away, and that the **entryman left the entry finally,** sold his farm machinery **and leased the entry** at the conclusion of three **years of cultivation** supports a contest charge **that he failed in the** act of **establishing** residence **on the entry** coincident with an intent to make the **entry his home** to the exclusion of a home **elsewhere, and the entry** should be cancelled for **failure to establish** and **maintain** residence as **required by the** homestead law.

Stanley W. Hutchison v. Clyde Bishop, A-29693 (May 4, 1964)

Under the homestead laws, acceptable final proof must show that there is a habitable house upon the entered lands; thus, when the proof shows that there is not a habitable house, the proof must be rejected and the entry canceled if the time for filing final proof has expired.

James E. Walter, A-30120 (Nov. 20, 1964)

RECLAMATION LANDS

IRRIGABLE LANDS

The provisions of law and departmental regulations which govern the size of farm units within the Flathead Irrigation Project permit units which vary in size between 40 and 160 acres, and where an increase in the irrigable area of a farm unit as originally established is necessary to support a family or to carry on an economical family-sized farming operation, this may be accomplished by combining two or more units into a single unit of not more than 160 acres and amending the farm unit plat accordingly.

The irrigation construction charges on farm units and privately held tracts within the Flathead Project have not been paid in full within the meaning of the acreage limitation provision in the Act of Aug. 9, 1912 (37 Stat. 265), since all such charges owing to the United States have not been paid, though none are currently owing. The fact that future construction charges are subject to repayment from power revenues as provided by the Act of May 25, 1948 (62 Stat. 269), does not alter the conclusion that such charges have not been paid in full within the meaning of the acreage limitation provisions of the 1912 Act.

Acreage Limitations on Landholding within the Flathead Irrigation Project, Montana, M-36667 (Oct. 21, 1964)

SETTLEMENT

An application for homestead entry based upon a settlement claim initiated in 1924 on land then withdrawn for the construction of irrigation works is properly rejected because the land was not open to settlement at the time of the settlement claimed or thereafter.

Sarah Marie Woolf Widow of Glenn Roy Woolf, A-30140 (Oct. 6, 1964)

RECREATION AND PUBLIC PURPOSES ACT

The rejection of applications under the Recreation and Public Purposes Act for the reason that additional information was not furnished as requested is sustainable on appeal when the information

RECREATION AND PUBLIC PURPOSES ACT --Continued

submitted by the applicant is not adequate to show that there is an established or definitely proposed project for recreation or public purposes by a competent authority which has a probability of being fully implemented within a reasonable time.

Pacific Institute of Earth Sciences, Atomic Energy and Solar Radiation, Inc., et al., A-30008 (Mar. 10, 1964)

REGULATIONS

GENERALLY

Oil and gas lease offers filed under the simultaneous-filing procedure in 43 CFR 192.43, accompanied with personal checks for the advance rental payment, are properly rejected for noncompliance with subdivision (c) of that regulation, in effect when the offers were filed.

Chester F. Merriman, A-30033 (Mar. 23, 1964)

A request for approval of an oil and gas assignment need not be rejected for the sole reason that it was not filed within 90 days after the execution of the assignment as required by regulation 43 CFR 192.141(a)(2) where that regulation has not been interpreted as making the requirement mandatory and where there are no intervening adverse parties who might be affected by approval of the assignment.

Alice R. Rudie, A-30061 (Mar. 25, 1964)

When the Federal Government owns land which is under the administration of the Secretary of the Interior as part of the National Wildlife Refuge System, the Secretary may make rules and regulations for the control and management of resident species of game on the land even though these regulations may be more

restrictive than the hunting and fishing laws of the State within which the land is located. These rules and regulations take supremacy over State law where there is a conflict.

Authority of the Secretary of the Interior to Manage and Control Resident Species of Wildlife Which Inhabit Wildlife Refuges, Game Ranges, Wildlife Ranges, and Other Federally Owned Property Under the Administration of the Secretary, M-36672 (Dec. 1, 1964) 71 I.D. 469

APPLICABILITY

Where a State has appealed to the Secretary from a requirement that it file a mineral waiver for selected school indemnity land reported to be prospectively valuable for oil and gas and the regulation requiring such waiver is amended to eliminate the requirement, the case will be remanded for further processing under the amended regulation.

State of Arizona, A-28752 (Feb. 13, 1964)
71 I.D. 49

Where a state has appealed to the Secretary from a requirement that it file a mineral waiver for selected land reported to be prospectively valuable for oil and gas and the regulation requiring such waiver is amended to eliminate the requirement, the case will be remanded for further processing under the amended regulation.

State of Arizona, A-27807 (Mar. 24, 1964)

WAIVER

Where an assignee of a soldiers' additional homestead right files in the land office the documents necessary for recordation together with an application to exercise the rights, asks the manager to forward the documents to the Director for recording, is told that his request will be granted, and is informed, upon each of several inquiries, that the documents have been sent to the Director, but they are retained in the land office until after the six-month period prescribed

by the regulation for presentation to the Director and they are then sent and recorded, and it is only some nine months later that objections to the recording are raised, the requirement of the regulation will be waived in the absence of any interest adverse to the assignee.

Olav Lillegraven, A-29765 (Feb. 12, 1964)

The Departmental regulation providing that, where a timely answer is not filed in a contest proceeding, the case will be decided on the basis of the allegations in the complaint cannot be waived in the case of a private contest.

Paradise Irrigation District v. James Duguid and Bertha V. Duguid, A-30125 (Nov. 20, 1964)
71 I.D. 442

Where a mining contest was initiated by this Department and the contestees did not file an answer but brought an action to enjoin the proceedings in the Federal courts and secured a temporary restraining order against the proceedings, but failed to obtain a further stay after the district court dissolved the restraining order or otherwise to relieve themselves of the necessity of filing an answer to the contest complaint, the Secretary will nonetheless entertain a petition to have a belated answer accepted where it appears that the litigation was continued in the appellate courts on the assumption of all parties and the courts that the contest proceedings had been held in abeyance and no rights of third parties are affected.

United States v. Humboldt Placer Mining Company and Del de Rosier, A-30055 (Nov. 20, 1964)
71 I.D. 435

RES ADJUDICATA

The doctrine of res judicata or its administrative law counterpart, the doctrine of finality of ad-

RES ADJUDICATA--Continued

ministrative action, has been recognized and applied in appropriate cases before the Department of the Interior since 1883. This doctrine is designed to achieve orderliness in the administration of the public lands as well as finality of decisions which have been closed finally and have not been appealed or otherwise attacked.

When an administrative officer has acted within his jurisdiction and a judicial review of such action has not been sought on a timely basis, the principles of estoppel, laches and res judicata are merged in the doctrine of finality of administrative action and are operative to bar a claim for relief.

Union Oil Company of California et al., A-29560 (Apr. 17, 1964) 71 I. D. 169

The fact that a mining claim may at one time have been found to be a valid claim does not estop the Department, under the principle of res judicata, from bringing adverse proceedings against the claim when an application for patent to the claim is filed.

United States v. LaFortuna Uranium Mines, Inc., A-29852 (May 4, 1964)

The United States, not having intervened as a party and not being suable without its consent, is not bound by either the finding, the decision, of the final judgment of a state court in proceedings held to confirm a repayment contract.

Applicability of the Excess Land Laws Imperial Irrigation District Lands, M-36675 (Dec. 31, 1964) 71 I. D. 496

RIGHTS-OF-WAY

GENERALLY

Where a regulation provides that the rates charged for a right-of-way across public lands may be revised only after notice and an opportunity for hearing, it is improper to increase the rates without following the prescribed procedure.

Texas Gas Transmission Corporation, A-29856 (Jan. 14, 1964)

RIGHTS-OF-WAY--Continued

GENERALLY--Continued

A right-of-way application for a television antenna site will be approved at the rental charge and for the amount of land determined appropriate and will not be granted on other terms in the absence of convincing evidence that the rental charge is excessive and the amount of land is insufficient.

Marshall Brondum, A-29944 (Mar. 23, 1964)

An applicant for an amended transmission line right-of-way under the act of March 4, 1911, is properly required to file the stipulation required by the Department's regulations agreeing to permit the Department to utilize surplus capacity in the line or to increase the capacity of the line for the transmission of power by the Department.

Southern California Edison Company, A-30325 (Nov. 3, 1964) 71 I. D. 405

The requirement imposed by the Department's regulations on an applicant for a transmission line right-of-way that he agree to permit the Department to utilize surplus capacity in the line or to increase the capacity of the line for the transmission of power by the Department is valid.

The existence of a contract between a power company and the United States, acting through the Atomic Energy Commission, whereby the company agrees to construct a transmission line from its facilities to facilities of the Commission and the Commission agrees to provide a right-of-way across land under its jurisdiction in Los Alamos County, has no bearing upon and is not affected by conditions imposed by this Department upon a grant of a right-of-way for a portion of the line across public land under the jurisdiction of this Department in Sandoval County.

Public Service Company of New Mexico, New Mexico 0554658 (Nov. 10, 1964) 71 I. D. 427

RIGHTS-OF-WAY--Continued

ACT OF JANUARY 21, 1895

A tramroad right-of-way granted under the Act of January 21, 1895, as amended, 43 U.S.C., sec. 956 (1958), creates no interest in the land. It is a mere permit to use the land, revocable at the discretion of the Secretary.

Feather River Railway Company, Sacramento 013803 (Nov. 5, 1964) 71 I.D. 415

ACT OF MARCH 4, 1911

A right-of-way application for a televisíon antenna site will be approved at the rental charge and for the amount of land determined appropriate and will not be granted on other terms in the absence of convincing evidence that the rental charge is excessive and the amount of land is insufficient.

Marshall Brondum, A-29944 (Mar. 23, 1964)

An applicant for an amended transmission line right-of-way under the act of March 4, 1911, is properly required to file the stipulation required by the Department's regulations agreeing to permit the Department to utilize surplus capacity in the line or to increase the capacity of the line for the transmission of power by the Department.

Southern California Edison Company, A-30325 (Nov. 3, 1964) 71 I.D. 405

The requirement imposed by the Department's regulations on an applicant for a transmission line right-of-way that he agree to permit the Department to utilize surplus capacity in the line or to increase the capacity of the line for the transmission of power by the Department is valid.

The existence of a contract between a power company and the United States, acting through the Atomic Energy Commission, whereby the company agrees to construct a transmission line from its facilities to facilities of the Commission and the Commission agrees to provide a right-of-way across land under its jurisdiction in Los Alamos County, has no bearing upon and is not affected by conditions imposed by this Department upon a grant of a right-of-way for a portion of the line across public land

RIGHTS-OF-WAY--Continued

ACT OF MARCH 4, 1911--Continued

under the jurisdiction of this Department in Sandoval County.

Public Service Company of New Mexico, New Mexico 0554658 (Nov. 10, 1964) 71 I.D. 427

APPLICATIONS

A right-of-way application for a television antenna site will be approved at the rental charge and for the amount of land determined appropriate and will not be granted on other terms in the absence of convincing evidence that the rental charge is excessive and the amount of land is insufficient.

Marshall Brondum, A-29944 (Mar. 23, 1964)

NATURE OF INTEREST GRANTED

A tramroad right-of-way granted under the Act of January 21, 1895, as amended, 43 U.S.C., sec. 956 (1958), creates no interest in the land. It is a mere permit to use the land, revocable at the discretion of the Secretary.

Feather River Railway Company, Sacramento 013803 (Nov. 5, 1964) 71 I.D. 415

REVISED STATUTES SEC. 2477

A patent of land under the Small Tract Act is subject to an existing public highway right-of-way within the provisions of sec. 2477 of the Revised Statutes regardless of the absence of a reservation for the right-of-way in the patent; therefore, a reservation for an existing public highway need not be made in a patent for a small tract and a protest against issuance of a patent for that reason is properly dismissed and the question of whether a road is a public highway left for determination in the State courts.

Alfred E. Koenig, A-30139 (Nov. 25, 1964)

RULES OF PRACTICE

GENERALLY

One of the purposes of a conference held pursuant to 43 CFR 4.9 is to arrive at stipulations of those facts which are not in controversy.

Appeal of Vitro Corporation of America, IBCA-376 (Jan. 27, 1964)

The rule of practice granting a 10-day grace period for filing documents required to perfect an appeal does not apply to the filing of proof of ownership of contiguous land to support a preference-right claim at a public sale.

Lyndell Williams, A-29873 (Feb. 17, 1964)

When after an appeal to the Secretary has been taken from a Bureau of Land Management decision rejecting an oil and gas lease offer new facts which were not available when the Bureau's decision was rendered have been ascertained by the Bureau which may warrant a change in its decision, the case will be remanded to let the Bureau reconsider its decision in light of those facts.

Halvor F. Holbeck, A-30052 (Mar. 10, 1964)

The fact that a mining claim may at one time have **been found to be** a valid claim does not estop the **Department, under** the principle of res judicata, **from bringing** adverse proceedings against the claim **when an** application for patent to the **claim is filed.**

United States v. LaFortuna Uranium Mines, Inc., A-29852 (May 4, 1964)

A petition for rehearing was properly denied for untimeliness under 25 CFR 15.17 by an Examiner of Inheritance when it was mailed by the petitioner's attorney on the last day of the 60-day period provided by the regulation but was not received by the Superintendent until after the expiration date.

Estate of Jack Fighter Fort Peck Allottee No. 1309, IA-1346 (May 26, 1964) 71 I.D.203

RULES OF PRACTICE--Continued

APPEALS

An appeal to the Director, Bureau of Land Management, will be dismissed when it is withdrawn by the appellant.

United States v. John W. Savage, A-30380 (Dec. 8, 1964)

Generally

Evidence not previously presented by the contractor to the contracting officer may be considered by the Board of Contract Appeals. Evidentiary facts which tend to prove or disprove every material ultimate fact found by the contracting officer or alleged in the contractor's claim may be considered.

Appeal of Vitro Corporation of America, IBCA-376 (Jan. 27, 1964)

The filing of a brief in support of an appeal (43 CFR 4.5(b) is optional with appellant. Only the requirement concerning the filing of the notice of appeal is jurisdictional (43 CFR 4.16).

In the event an appeal is dismissed without prejudice on request of the affected party, appeal will be reinstated automatically, provided such request complies with specific requirements, if any, of the prior dismissal order.

Appeal of James Hamilton Construction Company, IBCA-421-1-64 (Feb. 5, 1964)

Where an offer which drew first priority in a drawing of simultaneously filed offers is rejected because it is defective, the offer which drew the next priority may be reinstated although it had

been conditionally rejected, subject to reinstatement in the event offers with a higher priority did not ripen into leases, and no appeal had been taken from that action, and although another offer which may not be defective was filed before reinstatement of the offer by the offeror who had originally drawn first priority.

Robert B. Nation, A-29822 (Feb. 18, 1964)

The jurisdiction of the Board of Contract Appeals extends to appeals from findings of fact as well as from decisions by contracting officers.

Appeal of Baldwin-Lima-Hamilton, IBCA-418
(Feb. 19, 1964)

The Board of Contract Appeals has authority to apply equitable principles in determining matters over which it has jurisdiction. It has authority to direct contract administration action by the contracting officer if the contractor has a substantive right to such action, and if such action pertains to a matter over which the Board has jurisdiction. Its powers and those of the Office of the Survey and Review complement each other.

Appeal of Cosmo Construction Company, IBCA-412
(Feb. 20, 1964) 71 I. D. 61

The authority of the Board to decide disputes arising under the contract, including questions of law (43 CFR 4.4), does not include authority to grant relief for breach of contract, since the latter is not a dispute arising under the contract.

Appeal of Peter Kiewit Sons' Company, IBCA-405
(Mar. 13, 1964)

An appeal will be remanded to the Contracting Officer where the evidence in the appeal file is insufficient to support his findings of fact or decision.

Appeal of Simpson Drilling Company,
IBCA-423-1-64 (Mar. 13, 1964)

Where an appeal is taken from a refusal to accept for recordation a notice of location of settlement or occupancy of a trade and manufacturing site for the reason that a State selection has precedence, and the State later states that the selection was not intended to apply to land in the status of that included in the notice of location, the appeal becomes moot and the case will be remanded for further consideration of the notice of location.

Dean Burtis Bunker, A-30009 (Mar. 26, 1964)

When a protest against the issuance of an oil and gas lease to a prior offeror has been found to be without merit by the Department and when, there after, an appeal is taken from the rejection of the protestant's junior oil and gas lease offer because of the issuance of a lease to the prior offeror, a decision of the Bureau of Land Management which refers to the departmental decision on the protest is a sufficient answer to the appellant's objections to the rejection of his offer.

Duncan Miller, A-30147 (Apr. 8, 1964)

The Director of the Bureau of Land Management is not limited in his consideration of an appeal from a land office decision to the particular question raised by that appeal; he thus obtains jurisdiction over all of the issues which pertain to the transaction to which the appeal relates and may determine them.

R. D. Compton, Edna A. Compton, A-30206
(July 2, 1964)

Where a contractor alleges that it encountered changed conditions cognizable under a standard "Changed Conditions" clause, and the contracting officer denies the claims without deciding that issue, the appeal will be remanded to the contracting officer for the issuance of new or supplementary findings of fact.

Appeal of Peter Reiss Construction Co., Inc. and Lew Norris Demolition Co., Inc., IBCA-351
(Sept. 29, 1964)

RULES OF PRACTICE--Continued

APPEALS--Continued

Generally--Continued

Decisions of the Interior Board of Contract Appeals are final for the Department, and no provision is made for an appeal therefrom within the Department.

Appeal of Allied Contractors, Inc., IBCA-322 (Oct. 6, 1964)

The oral argument which is authorized on an appeal to the Secretary is not a hearing at which evidence may be submitted but an opportunity to present argument orally on the case record as previously made.

United States v. Gilbert C. Wedertz, A-30126 (Oct. 15, 1964) 71 I.D. 368

It is improper to finally reject an oil and gas lease offer previously conditionally rejected because of low priority acquired in a public drawing of simultaneously filed offers without notification to the offeror of the final rejection, the reason for such rejection, and of the right of appeal from such rejection.

Grace B. Moss, A-30203 (Dec. 4, 1964)

Dismissal

An appeal to the Secretary will be dismissed when the appellant withdraws the application which is the subject of the appeal.

William D. Sidley Silver Spur Cattle Company, A-29114 (Jan. 6, 1964)

Archie F. Hammon, A-29411a (Feb. 10, 1964)

An appeal to the Secretary will be dismissed when it is withdrawn by the appellant.

George B. Storer, A-30049 (Jan. 7, 1964)

Perley M. Lewis, A-29441a (Feb. 10, 1964)

Kathryn Vaskov, Simeon Vaskov, A-30150 (Apr. 17, 1964)

Len Mayer, A-30136 (Apr. 20, 1964)

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

FMC Corporation, A-30229 (June 8, 1964)

Agnes Mueller Cleveland, A-29499 (June 8, 1964)

Eagle Cedar Products, Inc., A-30349 (Sept. 21, 1964)

Maurine Mask, A-30363 (Nov. 18, 1964)

Albert Z. Richards, Jr., A-29505 (Dec. 8, 1964)

An appeal to the Secretary relating to an oil and gas lease will be dismissed when the appellant later states that he accepts the decision appealed from as to that lease.

Walter G. Davis, A-30186 (Supp.) (Jan. 21, 1964)

An appeal to the Secretary will be dismissed when it is in effect abandoned by the appellant.

Willard S. Roberts, A-30020 (Jan. 28, 1964)

An appeal to the Secretary will be dismissed when the appellant abandons it.

The Oil Shale Corporation, A-30207 (Feb. 26, 1964)

An appeal will be dismissed where the issue raised thereby becomes moot because of the withdrawal of the offer upon which the appeal is based.

Arthur E. Meinhart, A-30168 (Feb. 17, 1964)

A contract appeal will be dismissed where statements filed by both parties subsequent to the taking of the appeal show that no justiciable issue is presented by the appeal.

Appeal of Baldwin-Lima-Hamiltin, IBCA-418 (Feb. 19, 1964)

An appeal to the Director of the Bureau of Land Management from a hearing examiner's decision is properly dismissed when the notice of appeal is not filed with the hearing examiner within the 10-day period provided by the Federal Range Code.

Leon D. Robinson et al., A-30230 (Feb. 28, 1964)

An appeal will not be dismissed where a waiver and exception provision in a payment voucher omitted mention of one of the contractor's claims, but did not provide for release of all claims not excepted, where it appears that the voucher was prepared prior to the original submission of the omitted claim and the conduct of both parties at all times until the hearing of the appeal indicated an intent to preserve the claim. The presentation of such a motion to dismiss during the hearing is untimely.

Appeal of Triangle Construction Company, IBCA-296 (Mar. 2, 1964) 71 I. D. 73

Appellant's possibly erroneous characterization of a claim as being for breach of contract does not necessarily render the appeal subject to dismissal as being outside the jurisdiction of the Board.

The Board is not limited by the appellant's choice of remedy nor by the Government's assignment of defense. John A. Johnson Contracting Corp. v. United States, 132 Ct. Cl. 645 (1955). The Board may decide a claim upon a theory not advanced by the parties.

Appeal of Peter Kiewit Sons' Company, IBCA-405 (Mar. 13, 1964)

A hearing will be granted where there are factual issues to be resolved and the contractor has requested a hearing. In such circumstances a motion to dismiss will be denied as being premature.

Appeal of R & R Construction Company, IBCA-413 (Mar. 16, 1964)

Appellant's characterization of a claim as being for cost of "lost contract time" does not necessarily render the appeal subject to dismissal as being outside the jurisdiction of the Board.

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

The Board is not limited by the appellant's choice of remedy nor by the Government's assignment of defense. John A. Johnson Contracting Corp. v. United States, 132 Ct. Cl. 645 (1955). The Board may decide a claim upon a theory not advanced by the parties.

Appeal of T D & S Construction Company, IBCA-401 (Mar. 26, 1964)

An appeal to the Secretary will be dismissed when the application which is the subject of the appeal is withdrawn.

State of Utah, A-29700, A-29865, A-29929 (Apr. 16, 1964)

An appeal to the Secretary will be dismissed where the appellant indicates a desire to withdraw the application which was subject of the appeal by substituting a different kind of application for the land involved.

Fopiano Estate, A-30148 (May 12, 1964)

Where an appellant has requested that his appeal to the Secretary of the Interior be dismissed, the appeal will be dismissed.

A. E. Schwabacher, A-30079 (May 18, 1964)

When an offeror for an oil and gas lease relinquishes his offer while an appeal to the Secretary of the Interior is pending concerning the offer, the appeal will be dismissed.

H. E. Baumberger, A-29749, A-30091 (June 15, 1964)

An appeal from a decision of the Director of the Bureau of Land Management affirming the vacation of a public sale on the ground that acquisition of the land by private owners would interfere with recreational uses by the general

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

public will be dismissed when the appellant requests permission to withdraw its appeal because an agreement has been reached for reservation in the patents to be issued of the right of the general public to enter the lands for hunting and fishing.

Ellison Ranching Company, A-29808 (June 22, 1964)

When two preference-right claimants exist for a single subdivision of land offered at public sale and one has appealed the possible award of the land to the other, and subsequent to the appeal the claimants submit an agreement for the division of the land between them, the appeal will be dismissed and the case remanded for further appropriate action in light of the agreement.

Alfred A. Gregory Wilshire Management Company, Inc., A-30187 (July 30, 1964)

An appeal to the Secretary from a Bureau of Land Management decision requiring a phosphate lease annual rental payment will be dismissed when subsequent to filing of the appeal the appellant tenders the required payment and requests dismissal of the appeal.

Frank T. Andrews Trustee For Yuba Consolidated Industries, Inc., Debtor, A-30238 (Aug. 3, 1964)

An appeal to the Director of the Bureau of Land Management from a hearing examiner's decision in a grazing case is properly dismissed where the appeal was not prepared and filed with the Director until after expiration of the 30-day period in which the appeal was required to be filed.

J. R. Broadbent, A-30320 (Aug. 6, 1964)

The presence in a borrow pit of clay material which is unsatisfactory for use as backfill does not constitute a changed condition, where the boring logs indicated that clay material was present in the area of the project and the contract provisions contemplated no allowance for the type of material encountered and for use of additional borrow pits where required The appeal will be dismissed

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

where contractor's claim is based on alleged Government delay in locating additional borrow pits, since this is a claim for breach of contract and hence outside the Board's jurisdiction.

Appeal of Allied Contractors, Inc., IBCA-322 (Aug. 10, 1964)

An appeal will be dismissed for lack of jurisdiction where the contractor's claim is based on breach of contract, involving damage to the contractor's work site caused by water released by the Government from a storage reservoir, in alleged violation of an implied obligation not to interfere with the performance of the contract.

Appeal of Electric Properties Company, IBCA-443-5-64 (Sept. 3, 1964)

An appeal will be dismissed where the claim on which it is based arose from a mistake in the contractor's bid due to an erroneous price quoted to the contractor by a supplier.

Appeal of Philip Renzi & Son, Inc., IBCA-446-6-64 (Sept. 9, 1964)

An appeal to the Secretary of the Interior from a decision by the Geological Survey will be dismissed when it is withdrawn by the appellant.

The Pure Oil Company, A-30345 (Sept. 10, 1964)

An appeal to the Secretary will be dismissed when the appellant withdraws the application which is the subject of the appeal.

State of Utah, A-29534 (Sept. 23, 1964)

State of Utah, A-29957 (Sept. 23, 1964)

State of Utah, A-29988 (Sept. 23, 1964)

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

An appeal from the contracting officer's decision will be dismissed for lack of jurisdiction where the period from the unrebutted presumpive date of receipt thereof by the contractor to the date of filing of the notice of appeal exceeds the jurisdictional time limitations of 30 days imposed by the "Disputes" clause.

Appeal of T. C. Bateson Construction Company and Cheves Construction Company, IBCA-414 (Sept. 24, 1964)

An appeal to the Secretary will be dismissed when the application which is the subject of the appeal is withdrawn by the appellant.

State of Utah, A-29466a et al., (Oct. 5, 1964)

In situations where the certifying officer submits to the Comptroller General a question of law for a decision pursuant to 31 U.S.C. 82d, since he doubts the legality of a payment, the Board will not dismiss the appeal for lack of jurisdiction under circumstances such as present here. The Board is bound by a decision of the Comptroller General, pursuant to 31 U.S.C. 82d, that a specific change order is null and void. However, this does not deprive the contractor-appellant of his contractual right to be heard by the Board concerning changes and extras which have not been disposed of with finality by the Comptroller General.

Appeal of Richard J. Neutra and Robert E. Alexander, IBCA-408 (Oct. 16, 1964) 71 I.D. 375

An appeal to the Secretary will be dismissed when the appellant relinquishes the application on which the appeal is based and withdraws his appeal.

State of Alaska, A-28723a (Dec. 11, 1964)

State of Alaska, A-28723 (Dec. 23, 1964)

Effect of

An Examiner's order allowing a State's claim for old-age assistance grants will be modified on

RULES OF PRACTICE--Continued

APPEALS--Continued

Effect of--Continued

appeal to conform with a change in the regulations and policy of the Department.

Estate of Austin Cottonwood, IA-1240 (Jan. 8, 1964)

An Examiner's order allowing a State's claim for oil-age assistance grants will be modified on appeal to conform with a change in the regulations and policy of the Department.

Estate of Benjamin Looking White, Rosebud Sioux Allottee No. 2013 IA-1274 (Mar. 31, 1964)

A claim upon which no finding of fact or decision has been made by the contracting officer is outside the jurisdiction of the Board of Contract Appeals, even though presented in the same appeal with another claim that is within the jurisdiction of the Board, and will be remanded to the contracting officer for appropriate action, subject to the right of the contractor to appeal to the Board from a finding of fact or decision made in consequence of such remand.

Appeal of Paul A. Teegarden, IBCA-419-1-64 (Apr. 17, 1964)

Extensions of Time

The Board of Contract Appeals will hold proceedings upon a claim over which it has jurisdiction in abeyance for a reasonable time while a related claim is being processed at the contracting officer level, if the circumstances show that the orderly presentation and consideration of both claims probably will be facilitated by so doing.

Appeal of Paul A. Teegarden, IBCA-419-1-64 (Apr. 17, 1964)

Failure to Appeal

In the absence of an appeal from a new or supplemental findings of fact or decision, issued by a contracting officer in compliance with the remanc of the Board of Contract Appeals, no motion to dismiss is necessary since there is no appeal pending before the Board upon which to act. In the absence of a specific statement by the Board

Failure to Appeal--Continued

when remanding an appeal that it retains jurisdiction pending the issuance of a findings of fact or decision by the contracting officer, its decision is final, 43 CFR 4.4. Where the Board does not retain jurisdiction, a remand has the effect of closing the appeal on the docket of the Board.

Appeal of Divide Construction Company, IBCA-402 **(Jan. 22, 1964)**

An oil and gas lessee whose lease is declared to be terminated and who fails to appeal from the decision declaring the termination loses his rights in the lease.

Benson-Montin-Greer Drilling Corp., A-29966 (Mar. 30, 1964)

A decision declaring a mining claim null and void is conclusive and will not be reopened and vacated in the absence of a strong legal or equitable basis warranting reconsideration even though the basis for the cancellation has been found, in other proceedings, to be erroneous, where the claimant, who received notice of adverse charges against his claim, fails to answer the charges as required and fails to appeal or otherwise attack the decision declaring his claim invalid and takes no action with respect to the claim for many years.

One who fails to appeal from the cancellation of a **mining claim is not** entitled to a patent for which **application is** filed more than 25 years after **such cancellation,** even though the cancellation **was erroneous.**

Union Oil Company of California et al., A-29560 (Apr. 17, 1964) 71 I. D. 169

Where Bureau of Land Management decisions declaring mining claims to be null and void because of a lack of discovery of valuable minerals have become final because no appeal was ever taken to the Secretary of the Interior, they will not be disturbed in the absence of fraud or gross irregularity upon the request of the mining claimant who alleges procedural and substantive errors involving the earlier proceedings for the first time in an appeal to the Secretary involving other mining claims and it appears there was adequate opportunity for the claimant to raise these issues in the earlier proceedings but failed to do so.

Grace E. Hutchins, A-29297 (Supp. II.) (May 25, 1964)

RULES OF PRACTICE--Continued

APPEALS--Continued

Hearings

The Board of Contract Appeals will order the holding of a conference and a hearing where the appellant has requested a hearing, and where the lack of detail or clarity in the record indicates that the holding of a conference as well as a hearing will probably facilitate resolution of the issues, including any jurisdictional issues that may be pertinent.

Appeal of Clifford W. Gartzka, IBCA-399 (Jan. 22, 1964)

Hearings upon contract appeals are de novo.

Appeal of Vitro Corporation of America, IBCA-376 (Jan. 27, 1964)

The Board will not normally grant a motion to dismiss **on account** of lack of timeliness or failure **to comply** with a procedural time requirement of **a contract.** United States v. Bianchi, 373 U. S. 709 (1963) requires the proper establishment of **an adequate** appeal record on all phases of a **contract.**

Appeal of Layne Texas Company, IBCA-362 **(Jan. 30,** 1964)

A hearing will be granted where there are factual issues to be resolved and the contractor has requested a hearing. In such circumstances a motion to dismiss will be denied as being premature.

Appeal of R & R Construction Company, IBCA-413 (Mar. 16, 1964)

Service on Adverse Party

An appeal to the Director of the Bureau of Land Management is properly dismissed because of the appellant's failure to serve a copy of his notice of appeal and statement of reasons upon the adverse party as required by the Department's rules of practice.

James E. Morgan, A-30047 (Feb. 5, 1964)

Where an appeal to the Secretary is dismissed for failure of the appellant to serve the adverse party and the appellant then furnishes proof that service was timely made, the dismissal of the appeal will be vacated and the case decided on the merits.

Claud W. Orr, A-29838 (Supp.) (Mar. 12, 1964)

An appeal to the Secretary will be dismissed where the appellant does not serve a copy of his notice of appeal on the adverse party.

R. R. Burnham, A-30297 (June 29, 1964)

An appeal to the Director of the Bureau of Land Management is properly dismissed when the appellant fails to file a copy of his statement of reasons upon the adverse party named in the decision appealed from within the time allowed by the Department's rules of practice.

United States v. Great Western Chemical Mining Corporation et al., A-30236 (June 30, 1964)

An appeal to the Secretary of the Interior will be dismissed when the appellant fails to serve a copy of his notice of appeal and statement of reasons on the adverse party named in the decision appealed from.

Jay R. Lee, A-30175 (July 24, 1964)

An appeal to the Director, Bureau of Land Management, is properly dismissed where the appellant fails to serve a copy of his notice of appeal on the adverse party named in the decision appealed from.

Joseph J. Rollins, A-30284 (Aug. 6, 1964)

RULES OF PRACTICE--Continued

APPEALS--Continued

Service on Adverse Party--Continued

An appeal to the Director, Bureau of Land Management, is properly dismissed where the appellant does not file a statement of reasons in support of the appeal and does not furnish proof that he served a copy of his notice of appeal on the adverse party.

United States v. James T. Morrell, A-30346 (Nov. 24, 1964)

Standing to Appeal

A person who is not a party to a decision by a land office has no standing to appeal to the Director of the Bureau of Land Management from that decision, and such an appeal is properly dismissed.

Otto and Delena Delmoe, Charles Andreas, A-29939 (Feb. 18, 1964) 71 I. D. 56

An appeal will not be dismissed for technical defects consisting of the inadvertent omission of the corporate name of the contractor in the notice of appeal and the substitution therefor of the name of the contractor's representative or officer.

An appeal will be remanded to the contracting officer for issuance of new or supplemental findings of fact and decision where it appears that the contractor was in receivership prior to the filing of the notice of appeal and no information is contained in the appeal file concerning the present status of the receivership or as to the identity of the legal owners and representatives of the contractor.

Appeal of Edisto Construction Company, IBCA-409 (Feb. 28, 1964) 71 I. D. 68

Where regulations (25 CFR 15.19) provide an appeal to the Secretary of the Interior by a party aggrieved by a decision of the Examiner of Inheritance on a petition for rehearing, an appeal which is based on matters which were not before the Examiner on the petition for rehearing will be dismissed.

Robert Vernie LaBelle, IA-1355 (Mar. 30, 1964) 71 I.D. 119

RULES OF PRACTICE--Continued

APPEALS--Continued

Statement of Reasons

An appeal to the Secretary of the Interior will be dismissed when the appellant fails to mail his statement of reasons for the appeal until after the expiration of the period within which it was required to be filed.

Donald H. Jaeger, A-30176 (Jan. 15, 1964)

An appeal to the Director of the Bureau of Land Management is properly dismissed when the appellant fails to file a statement of reasons in support of the appeal.

David L. Murphy, A-30095 (Feb. 5, 1964)

Vera Krupp, A-30307 (Aug. 6, 1964)

An appeal to the Secretary of the Interior will be dismissed when the appellant fails to file a statement of reasons in support of the appeal.

Colorado Land Management, Inc., A-30195 (Feb. 5, 1964)

Grace E. Hutchins, A-30259 (May 5, 1964)

Edna D. Hooper, A-30263 (June 16, 1964)

Mace Oil Co., Inc., A-30264 (June 16, 1964)

R. R. Burnham, A-30297 (June 29, 1964)

Continental Oil Company, A-30353 (Nov. 23, 1964)

William Henrick and Vivian Eileen Henrick, A-30342 (Nov. 23, 1964)

Where an appeal to the Secretary is dismissed on the ground that the appellant failed to file a statement of reasons for the appeal, and a further search of the Department's records discloses that a statement was in fact timely filed, the dismissal of the appeal will be vacated and the case will be considered on its merits.
Henry R. Lichtwald, A-29063(Supp.) (Mar. 23, 1964)

RULES OF PRACTICE--Continued

APPEALS--Continued

Statement of Reasons--Continued

An appeal to the Secretary of the Interior for which a statement of reasons is not filed with the notice of appeal or within 30 days following the filing of the notice of appeal or within extensions of time allowed for that purpose will be dismissed.

United States v. Patricia Lemoge Hudelson, A-30172 (Mar. 31, 1964)

Where an applicant for land purports to appeal from a decision of the Director of the Bureau of Land Management rejecting his application but points to no error in the decision or gives no other reason for appealing, the appeal will be dismissed.

Edward R. Shepherd, A-30189 (Apr. 9, 1964)

An appeal to the Director is properly dismissed where no statement of reasons is filed in support of the appeal.

Clyde K. Carrier, A-30268 (June 18, 1964)

An appeal to the Secretary is properly dismissed when the appellant fails to point out any specific error in the decision appealed from.

Raphael P. Sutton, A-30248 (June 26, 1964)

The fact that the proper filing fee is not paid with a notice of appeal does not extend the running of the time within which a statement of reasons is required to be filed until the time when the proper fee is paid.

United States v. J. S. Devenny, A-30289 (Aug. 6, 1964)

An appeal to the Secretary will be dismissed when the appellant fails to point out any error in the decision appealed from.

Rudolph Kamon, A-30309 (Nov. 5, 1964)

RULES OF PRACTICE--Continued

APPEALS--Continued

Statement of Reasons --Continued

Where a mining claim is declared invalid by a land office on the ground that it was located on withdrawn land and the claimant appeals to the Director, stating that the claim is in effect the continuation of an earlier claim located before the withdrawal, it is error for the Director to dismiss the appeal on the ground that the claimant failed to file a statement of reasons for the appeal.

William T. Poates, Liane Poates, A-30371 (Nov. 23, 1964)

An appeal to the Director, Bureau of Land Management, is properly dismissed where the appellant does not file a statement of reasons in support of the appeal and does not furnish proof that he served a copy of his notice of appeal on the adverse party.

United States v. James T. Merrell, A-30346 (Nov. 24, 1964)

An appeal to the Director, Bureau of Land Management, is properly dismissed where the appellant fails to file a statement of reasons in support of the appeal within the time required by the rules of practice.

Helena M. Miller, A-30389 (Dec. 15, 1964)

An appeal to the Secretary will be dismissed when no statement of reasons is filed in support of the appeal.

St. Joseph Lead Company, A-30381 (Dec. 22, 1964)

An appeal to the Secretary will be dismissed when no statement of reasons is filed in support of the appeal.

Jennie K. Irwin, A-30368 (Dec. 22, 1964)

An appeal to the Secretary will be dismissed when no statement of reasons is filed in support of the appeal.

Thomas Leonard Gardner, A-30367 (Dec. 22, 1964)

RULES OF PRACTICE--Continued

APPEALS--Continued

Timely Filing

An appeal to the Secretary of the Interior will be dismissed when the appellant fails to mail his statement of reasons for the appeal until after the expiration of the period within which it was required to be filed.

Donald H. Jaeger, A-30176 (Jan. 15, 1964)

The Board of Contract Appeals does not have jurisdiction to entertain an appeal with respect to a claim which the contracting officer has neither determined, nor refused to determine, nor delayed unreasonably in determining.

Appeal of Cosmo Construction Company, IBCA-412 (Feb. 20, 1964) 71 I.D. 61

The timeliness of an appeal is governed by the period of time elapsed between the date when the findings of fact and decision were received by the contractor and the date when the notice of appeal was mailed or otherwise furnished to the contracting officer. The day on which the findings of fact and decision were received by the contractor is not included in the computation.

Appeal of Edisto Construction Company, IBCA-409 (Feb. 28, 1964) 71 I.D. 68

An appeal from a findings of fact and decision of the contracting officer will be dismissed where the notice of appeal was not mailed or otherwise furnished within the 30 days specified in the standard form of "disputes" clause of the contract.

Appeal of L. W. Case Corporation and Hood Construction Company, IBCA-416 (Mar. 2, 1964)

An appeal to the Secretary must be dismissed when the notice of appeal is mailed after the end of the 30-day period in which it is required to be filed.

Rudolph James Geisler, A-30269 (Mar. 31, 1964)

RULES OF PRACTICE--Continued

APPEALS--Continued

Timely Filing--Continued

An appeal to the Secretary of the Interior from a decision of the Director of the Bureau of Land Management will be dismissed when the notice of appeal is not filed within the 30-day period prescribed by the Department's rules of practice and, although received during the 10-day grace period, was not transmitted within the 30-day period.

Agnes I. Reed, A-30299 (June 30, 1964)

An appeal to the Director, Bureau of Land Management, is properly dismissed where the statement of reasons is not filed with the notice of appeal and is later filed in the office of the hearing examiner within the period allowed for filing but is not forwarded to the Director until after the expiration of that period.

The fact that the proper filing fee is not paid with a notice of appeal does not extend the running of the time within which a statement of reasons is required to be filed until the time when the proper fee is paid.

United States v. J. S. Devenny, A-30289 (Aug. 6, 1964)

An appeal from the contracting officer's decision will be dismissed for lack of jurisdiction where the period from the unrebutted presumptive date of receipt thereof by the contractor to the date of filing of the notice of appeal exceeds the jurisdiction time limitations of 30 days imposed by the "Disputes" clause.

Appeal of T. C. Bateson Construction Company and Cheves Construction Company, IBCA-414 (Sept. 24, 1964)

An appeal to the Secretary must be dismissed where the notice of appeal is not mailed until 9 days after the end of the 30-day period in which the notice is required to be filed.

Andrew Bing, A-30379 (Nov. 24, 1964)

RULES OF PRACTICE--Continued

EVIDENCE

Evidence not previously presented by the contractor to the contracting officer may be considered by the Board of Contract Appeals. Evidentiary facts which tend to prove or disprove every material ultimate fact found by the contracting officer or alleged in the contractor's claim may be considered.

Appeal of Vitro Corporation of America, IBCA-376 (Jan. 27, 1964)

Technical rules of evidence are not applicable to administrative proceedings, and hearsay evidence may be admitted in an administrative proceeding.

Where a mining claim is located in a national forest, the mining claimants are required to show the mineral values they claim by clear and unequivocal evidence.

United States v. Richard C. Porter et al., A-29882 (Apr. 24, 1964)

Where after a hearing held to determine the validity of mining claims both parties submit evidence consisting of assays of samples of ore taken after the hearing and affidavits of mining experts describing the samples or the claims which is pertinent to a resolution of the appeal, the new offerings may not be considered in the disposition of the appeal on its merits but may be examined to determine whether a new hearing is warranted, and, if it is, the case is to be remanded to hold one.

United States v. Kenneth O. Watkins and Harold E. L. Barton, A-29862 (Apr. 24, 1964)

To establish the mineral character of railroad grant land it must be shown that known conditions on the critical date are such as reasonably to engender the belief that the land contains mineral of such quality and in such quantity as to render its extraction profitable and justify expenditures to that end.

Southern Pacific Company, A-29736 et al. (May 27, 1964 71 I. D. 224

The question of whether particular documents, sought by a contractor for use in connection with a contract appeal, are within or without the scope of the Government's privilege against disclosure is a question that calls for the evaluation of such factors as: (1) the relevancy of the documents to the subject matter involved in the appeal; (2) the necessity of the documents for the proving of the appellant's case; (3) the seriousness of the danger to the public interests which disclosure of the documents would involve; (4) the presence in the documents of factual data, on the one hand, or of policy opinions, on the other; (5) the existence of confidential relationships which disclosure of the documents might unduly impair; and (6) the normal desirability of full disclosure of all facts in the possession of either party to the appeal.

Appeal of Vitro Corporation of America, IBCA-376 (Aug. 6, 1964) 71 I.D. 301

Admission of hearsay evidence in a hearing held to determine the validity of a mining claim is not cause for reversal if the decision is supported by substantial evidence, including probative hearsay.

United States v. C. M. Keyes et al., A-30098 (Aug. 18, 1964)

An appeal from the contracting officer's decision will be dismissed for lack of jurisdiction where the period from the unrebutted presumptive date of receipt thereof by the contractor to the date of filing of the notice of appeal exceeds the jurisdictional time limitations of 30 days imposed by the "Disputes" clause.

Appeal of T. C. Bateson Construction Company and Cheves Construction Company, IBCA-414 (Sept. 24, 1964)

Evidence submitted outside a hearing in a contest case cannot be considered in deciding the case on the merits but can be considered to determine whether or not a further hearing is warranted.

United States v. Gilbert C. Wedertz, A-30126 (Oct. 15, 1964) 71 I.D. 368

RULES OF PRACTICE--Continued

EVIDENCE--Continued

In a hearing on a contest challenging the validity of a mining claim on the ground that a discovery has not been made, it is proper to permit the contestant's witnesses, who have been qualified as mining experts and to whose qualification and the line of questioning eliciting the testimony the contestee has not objected, to submit their opinions whether or not a prudent man would be justified in spending time and money with a reasonable chance of success in developing a paying mine on the claim.

United States v. Lewis Reece et al., A-30037 (Oct. 21, 1964)

In a hearing on a contest challenging the validity of a mining claim on the ground that a discovery has not been made, it is proper to permit the contestant's witnesses, who have been qualified as mining experts and to whose qualification and the line of questioning eliciting the testimony the contestee has not objected, to give their opinions whether or not a prudent man would be justified in spending time and money with a reasonable chance of success in developing a paying mine on the claim.

United States v. Anita E. Spurrier et al., A-29306 (Oct. 21, 1964)

Assay reports submitted by a mining claimant after a hearing in a contest against his claims for lack of discovery cannot be considered in determining the contest on the merits but only for the purpose of determining whether a further hearing is warranted, and where the reports are only inferentially pertinent to the issue of discovery a further hearing will not be ordered.

United States v. James E. Hubbart, A-30205 (Nov. 27, 1964)

GOVERNMENT CONTESTS

When an applicant for a mineral patent, after proper notice and full opportunity to be heard, withdraws from a hearing held to determine the validity of his claim without submitting his evidence, it is proper for the hearing examiner to proceed with the hearing and to base his decision on the uncontroverted evidence submitted against the claim.

United States v. John Olson et al., United States v. Thor W. Paulsen et al., United States v. Patricia Lemoge Hudelson, A-29953, A-29958, A-29969 (Apr. 13, 1964)

RULES OF PRACTICE--Continued

GOVERNMENT CONTESTS--Continued

Where Bureau of Land Management decisions declaring mining claims to be null and void because of a lack of discovery of valuable minerals have become final because no appeal was ever taken to the Secretary of the Interior, they will not be disturbed in the absence of fraud or gross irregularity upon the request of the mining claimant who alleges procedural and substantive errors involving the earlier proceedings for the first time in an appeal to the Secretary involving other mining claims and it appears there was adequate opportunity for the claimant to raise these issues in the earlier proceedings but failed to do so.

Grace E. Hutchins, A-29297 (Supp. II), (May 25, 1964)

The procedure prescribed by the Interior Department's rules of practice for the initiation, prosecution, and decision of contests against mining claims does not violate the requirements of the Administrative Procedure Act for separation of functions and does not constitute a denial of due process.

United States v. Anita E. Spurrier et al., A-29306 (Oct. 21, 1964)

A determination of the invalidity of a mining claim by the manager of a land office is proper in a Government contest when the claimant fails to answer within the period allowed by the departmental rules of practice; it is no excuse that the contestee has brought an action in the Federal district court to enjoin the contest proceedings and secured a temporary restraining order when thereafter the restraining order is dissolved and, although the contestee appeals to the circuit court, he fails to have the injunction restored or a new one granted.

Where a mining contest was initiated by this Department and the contestees did not file an answer but brought an action to enjoin the proceedings in the Federal courts and secured a temporary restraining order against the proceedings, but failed to obtain a further stay after the district court dissolved the restraining order or otherwise to relieve themselves of the necessity of filing an answer to the contest complaint, the Secretary will nonetheless entertain a petition to have a belated

RULES OF PRACTICE--Continued

GOVERNMENT CONTESTS--Continued

answer accepted where it appears that the litigation was continued in the appellate courts on the assumption of all parties and the courts that the contest proceedings had been held in abeyance and no rights of third parties are affected.

United States v. Humboldt Placer Mining Company and Del de Rosier, A-30055 (Nov. 20, 1964)
71 I.D. 434

Where a Government contest is brought against a homestead entry charging failure to cultivate during the second and third years and the contestee answers but does not deny the charges and, in addition, files final proof showing lack of any cultivation on the entry, the allegations of the complaint are properly taken as admitted and the entry canceled.

Frank Allen Foster, A-30117 (Nov. 20, 1964)

Where a Government contest against a mining claim names four individuals as contestees, two of the contestees file an answer requesting a hearing, an attorney files an answer purporting to be on behalf of all the contestees, notice of the hearing is served only on the attorney and none of the contestees or the attorney appears at the hearing and the claim is declared null and void, the decision will be set aside and the case remanded for another hearing where the two contestees who filed an answer submit affidavits that the attorney did not represent them and they did not hold him out as representing them.

United States v. Don Brunkalla et al., A-30231 (Dec. 29, 1964)

HEARINGS

Where a regulation provides that the rates charged for a right-of-way across public lands may be revised only after notice and an opportunity for hearing, it is improper to increase the rates without following the prescribed procedure.

Texas Gas Transmission Corporation, A-29856 (Jan. 14, 1964)

Where a junior offeror insinuates that a lease issued to a senior offeror is invalid because the offeror-lessee was not the sole party in interest in the offer and lease but the junior offeror presents nothing more than innuendo or inference to support his allegation, he will not be granted a hearing for the purpose of attempting to develop evidence to support his allegation.

Tom Hoover, A-29777 (Feb. 3, 1964)

Where after a hearing held to determine the validity of mining claims both parties submit evidence consisting of assays of samples of ore taken after the hearing and affidavits of mining experts describing the samples or the claims which is pertinent to a resolution of the appeal, the new offerings may not be considered in the disposition of the appeal on its merits but may be examined to determine whether a new hearing is warranted, and, if it is, the case is to be remanded to hold one.

United States v. Kenneth O. Watkins and Harold E. L. Barton, A-29862 (Apr. 24, 1964)

When the Department of the Interior finds that public land within the place limits of a legislative grant in aid of the construction of a railroad is mineral in character and the railroad company challenges such finding, a hearing should be granted at which the Department has the obligation of making a prima facie case of mineral character whereupon the company has the burden of establishing nonmineral character by a preponderance of the evidence.

Southern Pacific Company, A-29736 et al.
(May 27, 1964) 71 I.D.224

A request for hearing is properly denied where it appears that a hearing would not develop material facts that are not already of record in the Bureau of Land Management.

Francis Taylor, A-30282 (Oct. 1, 1964)

Evidence submitted outside a hearing in a contest case cannot be considered in deciding the case on the merits but can be considered to determine whether or not a further hearing is warranted.

United States v. Gilbert C. Wedertz, A-30126
(Oct. 15, 1964) 71 I.D.368

Assay reports submitted by a mining claimant after a hearing in a contest against his claims for lack of discovery cannot be considered in determining the contest on the merits but only for the purpose of determining whether a further hearing is warranted, and where the reports are only inferentially pertinent to the issue of discovery a further hearing will not be ordered.

United States v. James E. Hubbart, A-30205
(Nov. 27, 1964)

Where a Government contest against a mining claim names four individuals as contestees, two of the contestees file an answer requesting a hearing, an attorney files an answer purporting to be on behalf of all the contestees, notice of the hearing is served only on the attorney and none of the contestees or the attorney appears at the hearing and the claim is declared null and void, the decision will be set aside and the case remanded for another hearing where the two contestees who filed an answer submit affidavits that the attorney did not represent them and they did not hold him out as representing them.

United States v. Don Brunkalla et al., A-30231
(Dec. 29, 1964)

PRIVATE CONTESTS

A private contest complaint which fails to allege facts constituting the ground or grounds of contest is properly dismissed.

James W. Shumaker v. Robert J. Scott, A-29977
(Feb. 20, 1964)

It is not necessary that the charges of a homestead contest be sustained by the contestant's evidence if the contestee submits evidence that is suitable for this purpose.

Stanley W. Hutchison v. Clyde Bishop, A-29693
(May 4, 1964)

RULES OF PRACTICE--Continued

PRIVATE CONTESTS

A determination of the invalidity of a mining claim by the manager of a land office is proper in a private contest when the claimant fails to answer within the period allowed by the departmental rules of practice; it is no excuse that the contestee has brought an action in the Federal district court to enjoin the contest proceedings and secured a temporary restraining order when thereafter the restraining order is dissolved and, although the contestee appeals to the circuit court, he fails to have the injunction restored or a new one granted.

The Departmental regulation providing that, where a timely answer is not filed in a contest proceeding, the case will be decided on the basis of the allegations in the complaint cannot be waived in the case of a private contest.

Paradise Irrigation District v. James Duguid and Bertha V. Duguid, A-30125 (Nov. 20, 1964)

PROTESTS

It is proper to treat as a protest rather than as an application to contest allegations which are uncorroborated as required by the Department's rules of practice.

Dr. and Mrs. A. J. Kafka, A-29807 (Feb. 3, 1964)

In considering a protest against a specific offer which did not draw first priority in a drawing, the Bureau of Land Management is not required to determine whether all of the offers which participated in the drawing properly describe the land sought merely because the protest contains a general assertion that all of the offers improperly described the lands applied for.

Arthur E. Meinhart, A-30168 (Feb. 17, 1964)

When a protest against the issuance of an oil and gas lease to a prior offeror has been found to be without merit by the Department and when, thereafter, an appeal is taken from the rejection of the protestant's junior oil and gas lease offer because of the issuance of a lease to the prior offeror, a decision of the Bureau of Land Management which refers to the departmental decision on the protest is a sufficient answer to the appellant's objections to the rejection of his offer.

Duncan Miller, A-30147 (Apr. 8, 1964)

RULES OF PRACTICE--Continued

PROTESTS--Continued

SUPERVISORY AUTHORITY OF SECRETARY

The Secretary of the Interior may assume jurisdiction over an appeal to the Director, Bureau of Land Management, without waiting for a decision by the Director.

Public Service Company of New Mexico, New Mexico 0554658 (Nov. 10, 1964) 71 I.D. 427

SCHOOL LANDS

INDEMNITY SELECTIONS

Since sections 2275 and 2276 of the Revised Statutes, as amended, permit a State to select mineral lands as indemnity for numbered school sections if the land for which indemnity is being sought was mineral in character, Arizona may select school indemnity land which is mineral in character if such land is delected as indemnity for mineral sections lost to the State prior to survey.

Where the Geological Survey classifies both selected and base lands in an indemnity selection as mineral, the State is entitled to the indemnity land without a reservation in the United States under the act of July 17, 1914, of minerals designated in the act.

Where a State has appealed to the Secretary from a requirement that it file a mineral waiver for selected school indemnity land reported to be prospectively valuable for oil and gas and the regulation requiring such waiver is amended to eliminate the requirement, the case will be remanded for further processing under the amended regulation.

State of Arizona, A-28752 (Feb. 13, 1964) 71 I.D. 49

SCHOOL LANDS--Continued

INDEMNITY SELECTIONS--Continued

A protest against an indemnity school selection is properly dismissed when it is based on the claim that the protestant has settlement rights to the land and he fails to show by any convincing or persuasive evidence that he has such rights.

Claud W. Orr, A-29838 (Supp.) (Mar. 12, 1964)

The date as of which the determination is to be made whether public land is eligible for selection as school land indemnity is the date on which the State has complied with all the requirements of the statute and regulations, including publication, and not the date when the State selection is filed.

As a result of the general withdrawals accomplished by Executive Orders Nos. 6910 and 6964 and the provisions of section 7 of the Taylor Grazing Act, a State's application for indemnity school lands is a petition to classify the lands as suitable for State selection and until classification the lands are not available for selection.

School land indemnity selections for lands within the known geologic structure of a producing oil and gas field, unless the lost lands are similarly situated, or for lands in a producing or producible lease, must be rejected, and the date of determination as to whether the selected lands are in the known geologic structure of a producing oil and gas field or are in a producing or producible lease is the date when the State has complied with all requirements for making a selection.

The phrase "known geologic structure of a producing oil and gas field" has been so long understood to include oil and gas fields which once produced and are still capable of production, although not currently producing, that the phrase as used in Rev. Stat. 2276(a)(2) will be considered to have the same meaning, despite the fact that the word "producing" is used in the next paragraph of the statute to mean actual production.

Land in any lease of a unit agreement which is in a participating area is to be considered as land in a producing or producible status so that all lands subject to that lease, whether in the unit or participating area, are not eligible for selection by a State as school indemnity lands.

If a State offers mineral land as base for an indemnity selection of land which is both valuable for oil shale and valuable for oil or gas and is situated within the known geologic structure of a producing oil or gas field (and the base land is not so situated) or is included in a producing or producible oil and gas lease, the State may

SCHOOL LANDS--Continued

INDEMNITY SELECTIONS--Continued

obtain the selected land, including the oil shale deposits, upon consenting to a reservation to the United States of the oil and gas in the selected land.

State of Utah, A-29461 et al. (Oct. 30, 1964)
71 I. D. 392

MINERAL LANDS

Since sections 2275 and 2276 of the Revised Statutes, as amended, permit a State to select mineral lands as indemnity for numbered school sections if the land for which indemnity is being sought was mineral in character, Arizona may select school indemnity land which is mineral in character if such land is selected as indemnity for mineral sections lost to the State prior to survey.

Where the Geological Survey classifies both selected and base lands in an indemnity selection as mineral, the State is entitled to the indemnity land without a reservation in the United States under the act of July 17, 1914, of minerals designated in the act.

Where a State has appealed to the Secretary from a requirement that it file a mineral waiver for selected school indemnity land reported to be prospectively valuable for oil and gas and the regulation requiring such waiver is amended to eliminate the requirement, the case will be remanded for further processing under the amended regulation.

State of Arizona, A-28752 (Feb. 13, 1964)
71 I. D. 49

The date as of which the determination is to be made whether public land is eligible for selection as school land indemnity is the date on which the State has complied with all the requirements of the statute and regulations, including publication, and not the date when the State selection is filed.

As a result of the general withdrawals accomplished by Executive Orders Nos. 6910 and 6964 and the provisions of section 7 of the Taylor Grazing Act, a State's application for indemnity school lands is a petition to classify the lands as suitable for State selection and until classification the lands are not available for selection.

School land indemnity selections for lands within the known geologic structure of a producing oil and gas field, unless the lost lands are similarly situated, or for lands in a producing or producible lease, must be rejected, and the

SCHOOL LANDS--Continued

MINERAL LANDS--Continued

date of determination as to whether the selected lands are in the known geologic structure of a producing oil and gas field or are in a producing or producible lease is the date when the State has complied with all requirements for making a selection.

The phrase "known geologic structure of a producing oil and gas field" has been so long understood to include oil and gas fields which once produced and are still capable of production, although not currently producing, that the phrase as used in Rev. Stat. 2276(a)(2) will be considered to have the same meaning, despite the fact that the word "producing" is used in the next paragraph of the statute to mean actual production.

Land in any lease of a unit agreement which is in a participating area is to be considered as land in a producing or producible status so that all lands subject to that lease, whether in the unit or participating area, are not eligible for selection by a State as school indemnity lands.

If a State offers mineral land as base for an indemnity selection of land which is both valuable for oil shale and valuable for oil or gas and is situated within the known geologic structure of a producing oil or gas field (and the base land is not so situated) or is included in a producing or producible oil and gas lease, the State may obtain the selected land, including the oil shale deposits, upon consenting to a reservation to the United States of the oil and gas in the selected land.

State of Utah, A-29461 et al. (Oct. 30, 1964)
71 I. D. 392

SCRIP

GENERALLY

An application for patent, based upon a private land claim under the act of Mar. 3, 1807, is properly rejected where no evidence is found that the claim was ever located and satisfied by land in place, and the record shows that Surveyor General's Certificates of Location were issued in full satisfaction of the claim, and the certificates were thereafter located on lands for which patents have since been issued.

Texaco, Inc., et al., A-29893 (May 13, 1964)

SCRIP--Continued

GENERALLY--Continued

A forest lieu selection application is properly rejected where the selected lands are part of a timber management area administered by the Bureau of Land Management under a program of intensive forest management.

Preston Nutter Corporation Attorney In Fact for C. W. Clarke, A-29960 (May 27, 1964)

RECORDATION

Where an assignee of a soldiers' additional homestead right files in the land office the documents necessary for recordation together with an application to exercise the rights, asks the manager to forward the documents to the Director for recording, is told that his request will be granted, and is informed, upon each of several inquiries, that the documents have been sent to the Director, but they are retained in the land office until after the six-month period prescribed by the regulation for presentation to the Director and they are then sent and recorded, and it is only some nine months later that objections to the recording are raised, the requirement of the regulation will be waived in the absence of any interest adverse to the assignee.

Olav Lillegraven, A-29765 (Feb. 12, 1964)

The presentation of scrip in connection with an application filed in a land office for the location of public land which includes all the elements of a proper presentation for recording, except a specific request for recordation, constitutes a presentation for recordation and when it is forwarded to and received by the Director, Bureau of Land Management, within the period allowed by statute for presentation for recording, it is improperly refused recordation merely because a formal request for recordation was not made within that period.

Henry H. Wheeler, A-29989 (Mar. 10, 1964)

SECRETART OF THE INTERIOR

The authority to regulate hunting and fishing on Federally-owned land has been delegated to the Secretary of the Interior by specific legislation.

Authority of the Secretary of the Interior to Manage and Control Resident Species of Wildlife Which Inhabit Wildlife Refuges, Game Ranges, Wildlife Ranges, and Other Federally Owned Property Under the Administration of the Secretary, M-36672 (Dec. 1, 1964) 71 I.D. 469

SMALL TRACT ACT

GENERALLY

A patent of land under the Small Tract Act is subject to an existing public highway right-of-way within the provisions of sec. 2477 of the Revised Statutes regardless of the absence of a reservation for the right-of-way in the patent; therefore, a reservation for an existing public highway need not be made in a patent for a small tract and a protest against issuance of a patent for that reason is properly dismissed and the question of whether a road is a public highway left for determination in the State courts.

Alfred E. Koenig, A-30139 (Nov. 25, 1964)

APPLICANTS

A small tract purchase application will be rejected when the applicants have applied for two small tracts, both applicants signing both applications, and have been allowed the purchase of one small tract, since a person is entitled to purchase only one small tract unless good faith and satisfactory reasons are shown for allowing the additional purchase. The existence of a well on

SMALL TRACT ACT--Continued

APPLICANTS--Continued

the tract applied for which adjoins the tract allowed is not sufficient reason to permit the sale of the second tract where no reason appears why a well cannot be dug on the tract allowed and the applicant possibly might be able to arrange for the use of the well on the other tract.

J. L. and Muriel L. Groves, A-29859 (July 23, 1964)

APPLICATIONS

It is error to assign land classified for small tract purposes to one whose application, filed prior to the classification order, should not have been accepted because of the applicant's failure to submit the advance payment required by regulation.

Glen S. Sherman, Jess Nachiondo, A-29846 (Feb. 12, 1964)

The filing of a small tract application does not create in the applicant any right or interest in the land covered by the application and entitles her only to have the application considered.

A small tract application is properly rejected where the classification order provided for the disposition of an area in tracts not necessarily conforming to the descriptions in the applications according to priority of filing, and the tract applied for was awarded to an applicant who filed a prior application covering part of the same land and conformed his application to the description of the tract offered under the classification order.

Betty L. Sherman, A-29901 (Feb. 19, 1964)

Applications filed under the Small Tract Act for certain pieces of land will not be amended by the Department to substitute any of a number of suggested alternative land descriptions.

Jack M. Gardner, Melvin Church, A-30029 (Mar. 25, 1964)

A small tract applicant acquires no right or interest by the filing of his application other than the right to have his application considered nor can he acquire any right because of a delay in the processing of his application.

Cecil W. Hinshaw, A-30006 (July 23, 1964)

SMALL TRACT ACT--Continued

APPLICATIONS--Continued

Where the fair market value of the land has been determined in accordance with accepted appraisal procedures, and by qualified appraisers, the appraisal will not be disturbed in the absence of positive, substantial evidence that it is in error.

Homer Demangate, Nevada 053766 (July 24, 1964)

CLASSIFICATION

A small tract classification is properly refused when the land is found to be more valuable for public retention for possible use in a stock driveway.

The Secretary of the Interior is not required to establish that land which he refuses to classify as chiefly valuable for small tract purposes is unsuited for such purposes; it is sufficient that in the exercise of his discretion the Secretary finds that the land is not chiefly valuable for such purposes, and applicants who question his decision must show by substantial, positive evidence that the classification is erroneous in order to have it set aside.

Jack M. Gardner, Melvin Church, A-30029 (Mar. 25, 1964)

Land embraced in unpatented mining claims which display no indications of abandonment is properly classified as not suitable for small tract purposes.

Mansell O. La Fox et al., State of California, A-29030 (May 14, 1964) 71 I. D. 199

The classification of land as suitable for disposition under the Small Tract Act does not preclude a subsequent cancellation of that classification when a different classification is found to be in the public interest.

Cecil W. Hinshaw, A-30006 (July 23, 1964)

LANDS SUBJECT TO

Where a public land order revoking a prior withdrawal states that a part of the land restored shall not be subject to the initiation of any

SMALL TRACT ACT--Continued

LANDS SUBJECT TO--Continued

rights or any disposition under the public land laws until so provided by a classification order, and no such order has been issued, or having been issued has been canceled, an application to enter the lands under the Small Tract Act is properly rejected.

Cecil W. Hinshaw, A-30006 (July 23, 1964)

PREFERENCE RIGHTS

A small tract application is properly rejected where the classification order provided for the disposition of an area in tracts not necessarily conforming to the descriptions in the applications according to priority of filing, and the tract applied for was awarded to an applicant who filed a prior application covering part of the same land and conformed his application to the description of the tract offered under the classification order.

Betty L. Sherman, A-29901 (Feb. 19, 1964)

Where a small tract is classified for direct sale to an applicant, he has a preference right to purchase the tract at the fair market value established therefor, but if the applicant disputes the appraised value established for the tract, he has the burden of proving that the appraisal is erroneous.

Dolores E. DeArman, Arizona 014071 (Sept. 23, 1964)

RENEWAL OF LEASE

A small tract lease for land which is classified for lease and sale will not be renewed where improvements were not constructed thereon during the term of the original lease and the lessee fails to show that his failure to construct improvements during the lease term is justified under the circumstances and that non-renewal of the lease would work an extreme hardship upon him.

No right to renew a small tract lease may be obtained by virtue of improvements placed upon land after the expiration of the lease or by hardship resulting from possible loss of such improvements because of non-renewal.

Carl G. Gunnarson, A-30018 (Mar. 6, 1964)

SMALL TRACT ACT--Continued

RENEWAL OF LEASE--Continued

A small tract lessee who does not show that there is a justifiable basis for his failure to construct improvements on the leased premises, as required by the lease, and that nonrenewal of the lease will work no extreme hardship upon him is properly denied a renewal of the lease.

William F. Freer, A-30164 (Apr. 10, 1964)

Where a second field examination reports that a lessee whose lease was renewed for 20 years on the condition that he correct certain deficiencies in his improvements within 2 years has satisfied those conditions, a decision based on an earlier report holding his lease for cancellation for failure to meet the conditions will be set aside.

Gordon E. Williams, A-29535 (June 26, 1964)

A small tract lease for land classified for lease and sale will not be renewed where the required improvements have not been constructed on the land during the term of the original lease and one renewal thereof and the appellant has not shown that failure to renew the lease will work an extreme hardship on him.

Robert E. O'Connell, A-30273 (Sept. 23, 1964)

An application for renewal of a small tract lease is properly rejected when it appears that the leased land has been classified for lease and sale and there is no satisfactory showing that failure to meet the requirements for sale of the tract is justified and that nonrenewal of the lease would cause extreme hardship to the lessee.

Charles M. Slocum, A-30188 (Oct. 1, 1964)

SMALL TRACT ACT--Continued

SALES

A small tract purchase application will be rejected when the applicants have applied for two small tracts, both applicants signing both applications, and have been allowed the purchase of one small tract, since a person is entitled to purchase only one small tract unless good faith and satisfactory reasons are shown for allowing the additional purchase. The existence of a well on the tract applied for which adjoins the tract allowed is not sufficient reason to permit the sale of the second tract where no reason appears why a well cannot be dug on the tract allowed and the applicant possibly might be able to arrange for the use of the well on the other tract.

J. L. and Muriel L. Groves, A-29859 (July 23, 1964)

An applicant under the Small Tract Act is properly required to pay the amount determined to be the fair market value of a tract of land classified for direct sale where all pertinent factors bearing on its value have been taken into account in the appraisal.

Nils Langenborg, A-30011 (Aug. 4, 1964)

An application to purchase public land held under small tract lease is properly rejected when it appears that the applicant has failed to meet the improvement standards upon which his option to purchase depended.

Eileen W. Grandall, A-30283 (Sept. 24, 1964)

SOLDIERS' ADDITIONAL HOMESTEAD

GENERALLY

Where an assignee of a soldiers' additional homestead right files in the land office the documents necessary for recordation together with an application to exercise the rights, asks the

SOLDIERS' ADDITIONAL HOMESTEAD--Continued

GENERALLY--Continued

manager to forward the documents to the Director for recording, is told that his request will be granted, and is informed, upon each of several inquiries, that the documents have been sent to the Director, but they are retained in the land office until after the six-month period prescribed by the regulation for presentation to the Director and they are then sent and recorded, and it is only some nine months later that objections to the recording are raised, the requirement of the regulation will be waived in the absence of any interest adverse to the assignee.

Olav Lillegraven, A-29765 (Feb. 12, 1964)

A soldier's additional homestead application will be rejected when the applicant cannot establish the identity of the serviceman and original entryman as the same person.

Charles M. Dollarhide, A-29933 (Mar. 5, 1964)

STATE EXCHANGES

GENERALLY

Where after an application for a State exchange is filed it appears that the selected lands are covered by apparently valid mining claims, the State, if it denies the validity of the claims, is to be allowed a hearing on the issue of whether or not the claims are valid.

Mansell O. La Fox et al., State of California, A-29030 (May 14, 1964) 71 I.D.199

STATE LAWS

A protest by a junior offeror in a drawing of simultaneously filed oil and gas lease offers which charges disqualification of a senior offeror because the senior offeror is married to another offeror so that neither was actually the sole party in interest in the separate offers filed is properly dismissed in the absence of any proof that either of the two offerors in question was not acting in his own behalf and that under the law of the State in which the land applied for lies a married person cannot hold or acquire property for his sole benefit without the other spouse's consent.

Duncan Miller, Samuel W. McIntosh, A-30071, A-30081, A-30106 (Apr. 2, 1964) 71 I.D.121

STATE SELECTIONS

Lands which are reported by the Geological Survey to be prospectively valuable for minerals subject to leasing under the Mineral Leasing Act are not subject to entry or selection under the nonmineral land laws without a mineral reservation to the United States in accordance with the act of July 17, 1914.

State of Arizona, A-27807 (Mar. 24, 1964)

State selections in satisfaction of a legislative grant of public land are preferred over conflicting private applications even though the State application may have been filed subsequent to the private application if the interval between the two filings is not so great as to indicate that the State failed to exercise reasonable diligence in exercising its selection right.

The filing of a State selection application within six weeks after the filing of public sale applications for the same land evidences reasonable diligence by the State in the exercise of its selection right so that the State application merits consideration with the public sale applications and allowance unless such allowance would serve the public interest less effectively than allowance of the public sale applications.

STATE SELECTIONS--Continued

The statutory grant of a 6-month preference period for the filing of State selection applications after every revocation of a withdrawal of public land within 10 years after Aug. 27, 1958, is entirely consistent with the existent departmental policy of permitting the public interest in the satisfaction of a legislative grant of public land to a State to tip the scales in favor of the State in the Department's consideration of a State selection application and a conflicting application for the initiation of private rights in the land.

The period of delay in the filing of a State selection application by which the diligence of a State in exercising its selection right is measured runs from the time an application for the acquisition of private rights in public land is filed until the State selection application is filed.

Atherton Sinclair Burlingham et al., A-30118
(Apr. 16, 1964) 71 I. D. 126

STATUTORY CONSTRUCTION--Continued

GENERALLY--Continued

specific elements of proof which, though listed in the regulations, were not made a part of the amendment.

Allotment of Land to Alaska Natives, M-36662
(Sept. 21, 1964) 71 I. D. 340

Where a federal statute provides that the reclamation laws shall govern the construction, operation, and management of project works, the excess land provisions of the reclamation laws are thereby carried into effect unless the terms of the statute provide otherwise.

The language of Section 1 of the Boulder Canyon Project Act (45 Stat. 1057; 43 U.S.C. sec. 617) does not by its plain terms create or recognize a water right.

Where Congress has deemed it proper to waive or modify the excess land laws in certain projects, it has always found it appropriate to enact positive legislation setting forth the exemption or other modification in unmistakable terms.

Statutes which grant privileges or relinquish rights of the public are to be strictly construed against the grantee.

Applicability of the Excess Land Laws Imperial Irrigation District Lands, M-36675 (Dec. 31, 1964) 71 I. D. 496

STATUTORY CONSTRUCTION

GENERALLY

While both the Indian Allotment Act of 1887, 24 Stat. 388, and the Alaska Allotment Act, 34 Stat. 197, as amended, 70 Stat. 954, are representative of the method which was used to grant land to "uncivilized" persons in the late nineteenth and early twentieth centuries, the specific requirements of the numerous allotment statutes enacted during that time vary according to the particular situations which they were intended to meet and the two acts should not be read in pari materia to impose identical requirements on applicants under each statute.

The effect of the enactment of Departmental regulations in the 1956 amendment to the Alaska Allotment Act, 70 Stat. 954, was to make mandatory under the statute the determination of use and occupancy which, prior to the 1956 amendment, had been discretionary except where the claim of a preference right was involved, but the amendment did not bind the Department to the exclusive consideration of the

ADMINISTRATIVE CONSTRUCTION

The departmental regulation, currently found at 43 CFR 230.70, which provides that section 5 of the Act of June 17, 1902 (32 Stat. 388, 389; 43 U.S.C. sec. 431), does not prevent the recognition of a vested water right for more than 160 acres and the protection of same by allowing the continued flowing of the water covered by the right through works constructed by the Government under appropriate regulations and charges, applies only to special situations where existing physical facilities or water rights are acquired under the authority of Section 10 of the 1902 Act (32 Stat. 389, 390; 43 U.S.C. sec. 373) for incorporation in a project and where the lands to which the water right appertains are not included within that project. This regulation was intended as a codification of the Opinion of Assistant Attorney General, 34 L.D. 351 (January 6, 1906).

Applicability of the Excess Land Laws Imperial Irrigation District Lands, M-36675 (Dec. 31, 1964) 71 I. D. 496

STATUTORY CONSTRUCTION--Continued

LEGISLATIVE HISTORY

The legislative history of section 2(f) of the Bonneville Project Act as amended on Oct. 23, 1945 (59 Stat. 546, 16 U.S.C. 832a(f)), expresses an intent on the part of Congress to authorize the Bonneville Power Administrator to conduct his affairs in a matter which equates his authority with that of private business enterprises.

Canadian Entitlement Exchange Agreements, M-36669 (July 20, 1964) 71 I.D. 315

The legislative history of the Boulder Canyon Project Act (45 Stat. 1057, 1066; 43 U.S.C. secs. 617-617t) does not reveal that Congress intended to exempt, by implication or otherwise, the private lands within Imperial Valley from the federal excess land laws.

Applicability of the Excess Land Laws Imperial Irrigation District Lands, M-36675 (Dec. 31, 1964) 71 I.D. 496

SUBMERGED LANDS

When a river shifts position gradually so as to submerge land on one shore and later accretions form on the opposite shore covering the spot formerly on the other side of the stream, the river remains the boundary and the owner of the shore to which the accretion attaches gains title to the land formerly belonging to the opposite owner.

Henry E. Schemmel, Harold Eugene Feese, A-29906 (Feb. 20, 1964)

SUBMERGED LANDS ACT

GENERALLY

The Submerged Lands Act (act of May 22, 1953, c. 65, 67 Stat. 29, 43 U.S.C. 1301-1315) relinquished any former title of the United States to lands naturally-made as islands, which formerly were "lands beneath navigable waters," as that phrase is defined in the act. Title to accretions to public lands of the United States was not affected by the act.

The ruling of the Bureau of Land Management of the Department of the Interior in the case of Floyd A. Wallis (BLM-A-036376), as affirmed by the Secretary of the Interior (65 I.D. 369 (1958), to the contrary is erroneous and should be revoked.

Title to Naturally-Made Lands Under the Submerged Lands Act (Dec. 20, 1963) 71 I.D. 22

The Departmental decision in Henry S. Morgan, Floyd A. Wallis, et al., BLM-A-036576 (1956), affirmed by the Secretary of the Interior, 65 I.D. 369 (1958), is overruled to the extent that it is inconsistent or in conflict with the conclusion reached in the opinion of the Solicitor General issued December 20, 1963.

The Submerged Lands Act of May 22, 1953, 67 Stat. 29; 43 U.S.C., sec. 1301 et seq., released to the States any former title of the United States to lands which were formerly beneath navigable waters as defined in section 2(a) of the Act, but which emerged as islands through natural processes within the boundaries of the States before the effective date of the Act.

Lands which are "made" as that term is used in section 2(a)(3) of the Submerged Lands Act of May 22, 1953, 67 Stat. 29; 43 U.S.C., sec. 1301 et seq., include lands which are formed by natural processes as well as those which are man made.

Interpretation of the Submerged Lands Act, M-36665 (Jan. 31, 1964) 71 I.D. 20

See Solicitor General's Opinion December 20, 1963, p. 22

FACE RESOURCES ACT

GENERALLY

In a proceeding under section 5(c) of the act of July 23, 1955, to determine the rights of a mineral claimant to the surface resources of his mining claims it must be shown that there have been valid discoveries within the meaning of the mining laws made within the limits of each of his claims to prevent the claims from being subjected to the terms and limitations of section 4 of that act.

In a proceeding under section 5(c) of the act of July 23, 1955, to determine the rights of a mining claimant to the surfaces resources of his millsite claim it must be shown that there is a present use or occupancy of the mill site for mining or milling purposes in order to avoid the terms and limitations of section 4 of that act.

United States v. Irving Rand and John M. Balliet, A-30036 (Oct. 19, 1964)

VERIFIED STATEMENT

The purchaser under a contract of sale of an undivided two-thirds interest in a mining claim may file the verified statement required of a mining claimant by section 5(a) of the act of July 23, 1955.

United States Department of Agriculture Utah Construction and Mining Co., A-29722 (Jan. 28, 1964) 71 I. D. 3

A verified statement which shows mining claims located prior to an administrative decision declaring the claims null and void is properly rejected as to such claims.

Where a verified statement lists a mining claim which has been declared null and void and a mining claim of the same name but described as an amended claim, the statement is properly rejected as to the original location but whether it is effective as to the amended location depends on whether it is a relocation of the old claim or otherwise a new claim in substance.

Everett M. Baumkirchner et al., A-29812 (Feb. 12, 1964)

A verified statement, asserting rights to surface resources of a mining claim, filed after the expiration of the 150 days following the date of first publication of a notice covering the mining claim as required under the act of July 23,

SURFACE RESOURCES ACT--Continued

VERIFIED STATEMENT--Continued

1955, is properly rejected since this Department cannot waive the requirement of timely filing prescribed by the act.

Alice A. Upton et al., A-30093 (Mar. 26, 1964)

A person found to be in possession of or engaged in working land in a mining claim is entitled to actual notice of determination of surface rights unless reasonable inquiry does not reveal his name and address.

When the Forest Service sends a copy of a notice of determination of surface rights to the former address of a corporation working the land rather than the current address of the company, both addresses being on file in the local Forest Service office and ascertainable upon reasonable inquiry, and in consequence the company files a verified statement more than 150 days after first publication of the notice, the statement will be accepted.

Cascade Calcium Products, Inc., A-29936 (Apr. 20, 1964)

A verified statement filed pursuant to section 5 of the act of July 23, 1955, asserting surface rights in mining claims which does not designate the section or sections of the public land survey which embrace the claims is properly rejected as an incomplete statement and it is improper to allow additional time after the expiration of the 150-day period allowed by statute for filing such statement to permit the mining claimant to furnish information that was lacking in the statement as originally filed.

R. D. Compton, Edna A. Compton, A-30206 (July 2, 1964)

SURVEYS OF PUBLIC LANDS

GENERALLY

A description in an oil and gas lease offer for acquired land of land in a right-of-way which is excluded from the land applied for is insufficient where the right-of-way is described only by giving the course and distance of the center line and the width of the right-of-way and by tieing the description to a quarter-quarter section corner.

Charles J. Babington, A-29688 (Mar. 20, 1964)
71 I. D. 110

Where a public sale application has been rejected for the reason that the lands applied for, shown by an 1873 survey as riparian land on the north bank of the Canadian River, are now submerged by the river, but the latest survey information is 14 years old and there is a possibility that subsequent changes of the river have caused all or part of the submerged lands to reappear as fast land on the north bank of the river, the case will be remanded for determination of the present facts and for further consideration of the application in light of the determined facts.

Verner V. Parker, A-30123 (Oct. 2, 1964)

TAYLOR GRAZING ACT

CLASSIFICATION

It is proper to vacate a sale of public land where, prior to the issuance of a cash certificate, the land is classified pursuant to section 7 of the Taylor Grazing Act for retention in Federal ownership.

Violet M. Brown, A-29019 (Jan. 9, 1964)

State selections in satisfaction of a legislative grant of public land are preferred over conflicting

TAYLOR GRAZING ACT--Continued

CLASSIFICATION--Continued

private applications even though the State application may have been filed subsequent to the private application if the interval between the two filings is not so great as to indicate that the State failed to exercise reasonable diligence in exercising its selection right.

The filing of a State selection application within six weeks after the filing of public sale applications for the same land evidences reasonable diligence by the State in the exercise of its selection right so that the State application merits consideration with the public sale applications and allowance unless such allowance would serve the public interest less effectively than allowance of the public sale applications.

Atherton Sinclair Burlingham et al., A-30118
(Apr. 16, 1964) 71 I. D. 126

Lands withdrawn by E. O. No. 6910 may be classified under sec. 7 of the Taylor Grazing Act for retention in Federal ownership for use in connection with an existing, experimental range research program rather than for desert land entry; and a desert land application for lands so classified is properly rejected without the necessity of another formal withdrawal of the lands for that specific purpose.

Calvin B. Neeley, A-30235 (Oct. 12, 1964)

As a result of the general withdrawals accomplished by Executive Orders Nos. 6910 and 6964 and the provisions of sec. 7 of the Taylor Grazing Act, a State's application for indemnity school lands is a petition to classify the lands as suitable for State selection and until classification the lands are not available for selection.

State of Utah, A-29461 et al. (Oct. 30, 1964)
71 I. D. 392

TIMBER SALES AND DISPOSALS

Where a timber sale contract provides for the sale of all timber in a "contract area" shown on a map attached to the contract and the map shows the contract area as containing a clear cut area, designated as containing 47.5 acres, which is bounded by a legal subdivision line and by a line that is blazed, branded, or posted and the contract provides that the purchaser has the responsibility of locating legal subdivision lines, the contract is not to be interpreted as obliging the Government to sell the purchaser the timber on 47.5 acres but the timber in the precise area outlined on the map, and the purchaser is not entitled to a refund because the clear cut area actually comprises only 38.9 acres.

Where a timber sales contract places upon the purchaser the responsibility of establishing the boundaries between the Federal lands in the contract and other lands, the purchaser is not entitled to any refund or abatement of the purchase price where his failure to establish such boundaries caused it to trespass on State land and to incur liability for damages for such trespass.

Where a timber sales contract requires the purchaser to construct a road, it is not entitled to an adjustment of the contract price for a proportionate part of the road costs because the acreage of timber sold is less than that designated on a map attached to the contract.

Diamond Lumber Company, A-29970 (June 22, (1964)

A refund of a portion of the price paid under a timber purchase contract will not be made because the quantity of timber is less than the purchaser anticipated when the contract of sale provided that the purchaser shall be liable for the total purchase price regardless of whether the quantity is less than estimated.

Thompson Timber Company, A-30114 (June 23, 1964)

Where damages for default by a bidder in a timber sale have been liquidated by the parties in the amount of a deposit submitted with the bid, such liquidated damages are for assessment as measuring the extent of the bidder's obligation in the matter without the necessity of inquiring into the question of the actual damages incurred.

Chester C. Gibby, A-30048 (June 30, 1964)
71 I.D. 247

TIMBER SALES AND DISPOSALS--Continued

A refund of a portion of the price paid under a timber purchase contract will not be made when the quantity of timber cut is allegedly less than the volume estimated for purposes of the sale where the contract of sale provides that the purchaser shall be liable for the total purchase price regardless of whether the quantity is less than was estimated.

Main Lumber Company, A-30200 (July 7, 1964)

TORTS

GENERALLY

Any claim against the United States which involves Bureau of Reclamation projects and is potentially cognizable under either the Federal Tort Claims Act or the Public Works Appropriation Act must be considered under both acts in order to arrive at a complete administrative disposition in an administrative determination. A direct statement should be included in an administrative determination why the claim cannot or should not be considered under both acts when the consideration under either act is omitted.

Claim of Charles H. Reaves, TA-234 (Ir.) (Feb. 17, 1964)

The credibility of expert witnesses and the weight of their testimony are matters for the determination by the trier of the facts. The opinions of experts, although on the precise point to be determined, do not relieve the trier of the facts of the authority and corresponding responsibility of forming his own independent opinion based on all the evidence presented.

Claim of Hanover Irrigation District, TA-256 (Ir.) (Feb. 20, 1964)

In order for recovery to be allowed under the Federal Tort Claims Act, it is not sufficient to show merely that the claimant is free from negligence. It is necessary to establish that a Government employee is guilty of a negligent or wrongful act or omission which proximately caused the damage which is the subject of the claim.

Claim of Vivian L. Johnson, TA-264 (May 7, 1964)

TORTS--Continued

GENERALLY--Continued

The United States can be held liable under the Federal Tort Claims Act only if the individual whose alleged act or omission led to a claim against the Government is an employee of the United States. Hence, any question concerning that individual's employment is a threshold issue and must be considered at the outset.

The fact that the United States supplies material, personnel, and funds for a project, carried out in cooperation with other organizations, does not make the project a joint adventure, unless there was either an express or implied contract by which the United States undertook to bind itself to the consequence of a joint adventure.

Claim of Lawrence M. Montgomery and Pacific Indemnity Company, TA-266 (May 14, 1964) 71 I. D. 196

The immunity granted to the United States by 33 U.S.C. 702c from liability of any kind for any damage from or by floods or flood waters at any place is available to the United States as a defense in suits brought under the Federal Tort Claims Act.

The Flood Control Act, 33 U.S.C. 702c, is an immunity statute. Such a statute is necessary, and therefore applicable, only where there would be a liability without it.

Claim of Bill Powers, TA-271 (Ir.)(June 8, 1964) 71 I. D. 237

AIRCRAFT

As a general rule, under Federal law and State laws, pre-flight waivers of liability, in the form used by the Bureau of Reclamation, obtained by the United States from nonofficial passengers on Government aircraft will be upheld, except as against willful misconduct or gross negligence.

Tort Liability and Waiver Requirements, M-36674 (Dec. 30, 1964) 71 I. D. 493

AMOUNT OF DAMAGES

Upon the presentation of proper proof, an award of damages to one injured through the negligence of another may include an allowance for loss of wages and for pain and suffering.

TORTS--Continued

AMOUNT OF DAMAGES--Continued

As a general rule, any payment to an injured party from a collateral source is not deductible from an award made to the injured party against one who negligently caused the injury.

Claim of Michael J. Dolan, Jr., T-1176 (Supp.) (Feb. 10, 1964) 71 I. D. 48

Claims which exceed $2,500 may not be considered administratively under the Federal Tort Claims Act.

Claim of Hanover Irrigation District, TA-256 (Ir.) (Feb. 20, 1964)

ANIMALS AND LIVESTOCK

Under a Wyoming statute, it is unlawful for the owner, or anyone having custody of livestock to permit the livestock to run at large in any fenced lanes or fenced roads. The words "to permit" imply knowledge, consent, and wilfulness, or such negligent conduct on the part of the owner, or other person having custody of the livestock, as is equivalent thereto. Hence, proof of these elements is essential to a showing of a violation of the statute.

Claim of Vivian L. Johnson, TA-264 (May 7, 1964)

CONFLICTS OF LAW

The fact of whether an individual is or is not an **employee of** the United States is a Federal question **to be** determined under Federal law. The **scope of the** individual's employment is a question **to be** determined under the law of the pertinent State.

Claim of Lawrence M. Montgomery and Pacific Indemnity Company, TA-266 (May 14, 1964) 71 I. D. 196

In view of the state of the authorities, it is not possible to state with certainty whether State or Federal law will ultimately be accepted as governing the effectiveness of pre-flight waivers of liability obtained by the United States from nonofficial passengers on Government aircraft.

Tort Liability and Waiver Requirements, M-36674 (Dec. 30, 1964) 71 I. D. 493

TORTS--Continued

DISCRETIONARY FUNCTIONS

A decision not to place culverts under an irrigation lateral, made at the policy and planning level, when no danger from this method of construction is apparent or realized, and a contrary decision would affect the feasibility of the project, is a discretionary act within the meaning of the discretionary function exception of the Federal Tort Claims Act.

Claim of Bill Powers, TA-271 (Ir.) (June 8, 1964) 71 I.D. 237

PERSONAL INJURY OR DEATH

In wrongful death actions brought under derivative type statutes, pre-flight waivers of liability executed by the decedent have been given the same effect as they would have been given in an action brought by the decedent while still alive.

In wrongful death actions brought under non-derivative type statutes, pre-flight waivers of liability executed by the decedent may be held not to bar the right of action, on the theory that the decedent could not give away something which did not belong to him.

Tort Liability and Waiver Requirements, M-36674 (Dec. 30, 1964) 71 I.D. 493

PROPERTY DAMAGE

The United States is not liable under the Federal Tort Claims Act for damage to private property caused by floods or flood waters since 33 U.S.C. 1958 ed., 702c exempts it from liability for such damage.

Claim of Charles H. Reaves, TA-234 (Ir.) (Feb. 17, 1964)

SCOPE OF EMPLOYMENT

The fact of whether an individual is or is not an employee of the United States is a Federal question to be determined under Federal law. The scope of the individual's employment is a question to be determined under the law of the pertinent State.

Claim of Lawrence M. Montgomery and Pacific Indemnity Company, TA-266 (May 14, 1964) 71 I.D. 196

TORTS--Continued

TRESPASS--Continued

Electric transmission line easement which gives the grantee the right to maintain and keep parcel of land "at all times free and clear of trees and brush" includes right to spray small natural growth conifers which have not reached such height as to threaten physical or electrical contact with the conductor or which have not reached such density as to block maintenance access along the right-of-way.

The owner of an electric transmission line easement may fully use the rights granted by the easement, including rights necessarily implied or incidental thereto.

The owner of electric transmission line easement is not limited in maintenance of the easement to those methods known or generally practiced at the time of acquisition but may use methods of maintenance reasonably necessary under existing conditions.

Claim of Port Blakely Mill Company, T-P-320 (May 1, 1964) 71 I.D. 217

TRESPASS

GENERALLY

When the evidence presented before a hearing examiner, in a hearing held to determine whether violations of the Federal Range Code have occurred because of an alleged grazing of cattle on the Federal range beyond the time period permitted by the license of the party, does not support the Government's allegations of willful trespass or valuation of forage consumed, it is improper to penalize the licensee by ordering reductions in future licenses to be issued to him and the case will be remanded for further action to assess damages for the trespass committed, after reconsidering the extent of the trespass and the valuation of the forage consumed.

Alvie E. Holyoak, A-29805 (Jan. 23, 1964)

Occupancy of public lands, without authority after expiration or termination of a right-of-way permit constitutes a trespass.

Feather River Railway Company, Sacramento 013803 (Nov. 5, 1964) 71 I.D. 415

TRESPASS--Continued

MEASURE OF DAMAGES

A refusal to issue any license for Federal range use greater than 75 percent of the Class 1 qualifications of an appellant's base property for a period of two years is properly made upon a determination that the appellant has willfully grazed more sheep on the Federal range than authorized by his license where he has a long history of past violations.

L. W. Roberts, A-29860 (Apr. 23, 1964)

UNITED STATES

The United States, not having intervened as a party and not being suable without its consent, is not bound by either the finding, the decision, of the final judgment of a state court in proceedings held to confirm a repayment contract.

Applicability of the Excess Land Laws Imperial Irrigation District Lands, M-36675 (Dec. 31, 1964) 71 I. D. 496

WATER COMPACTS AND TREATIES

The Bonneville Power Administrator, acting for and on behalf of the United States Entity designated pursuant to the Canadian Treaty, is carrying out the directives of Article VIII of the Treaty and the Exchange of Notes made pursuant thereto in executing the Canadian Entitlement Exchange Agreements.

Canadian Entitlement Exchange Agreements, M-36669 (July 20, 1964) 71 I. D. 315

WATER AND WATER RIGHTS

GENERALLY

Nothing in the Reclamation Act of 1902 (32 Stat. 388) or its legislative history suggests that private landowners with water rights could participate in a project, pay their share of its cost, but be exempt from acreage limitation.

Neither the existence nor nonexistence of a vested water right is itself determinative of whether the excess land laws are applicable in any given case.

Applicability of the Excess Land Laws Imperial Irrigation District Lands, M-36675 (Dec. 31, 1964) 71 I. D. 496

WITHDRAWALS AND RESERVATIONS

GENERALLY

A mining claimant has the burden of proving in a contest against his claim that a discovery has been made after the Government has made a prima facie case that the claim is invalid for want of a discovery of a valuable mineral deposit, and where the land covered by the claim has been withdrawn from all mineral entry, the claimant must show that the discovery preceded the effective date of the withdrawal.

United States v. Julius S. Foster and Minerals Engineering Company, A-29994 (June 24, 1964)

Lands withdrawn by E. O. No. 6910 may be classified under sec. 7 of the Taylor Grazing Act for retention in Federal ownership for use in connection with an existing, experimental range research program rather than for desert land entry; and a desert land application for lands so classified is properly rejected without the necessity of another formal withdrawal of the lands for that specific purpose.

Calvin B. Neeley, A-30235 (Oct. 12, 1964)

EFFECT OF

A mining claim made on land withdrawn from mineral entry is void ab initio and will not be validated by any modification of the withdrawal to permit mining locations.

Betty J. Fuller, Luella M. Strother, A-30218 (July 13, 1964)

Lands withdrawn from all forms of entry under the public land laws are not subject to disposition pursuant to applications for Indian allotments.

Louis A. Brant et al., New Mexico 0553627 (Okla.) etc. (Oct. 20, 1964)

A temporary withdrawal of oil shale deposits and lands containing such deposits from lease or other disposal for the purposes of investigation, examination, and classification, made by the President under the authority of the act of June 25, 1910, continues in effect until revoked by the President or by act of Congress, and applications for oil shale leases on such withdrawn lands are properly rejected.

Allan E. Mecham et al., A-30244 (Dec. 23, 1964)

EXECUTIVE ORDER 6910

Lands withdrawn by E.O. No. 6910 may be classified under sec. 7 of the Taylor Grazing Act for retention in Federal ownership for use in connection with an existing, experimental range research program rather than for desert land entry; and a desert land application for lands so classified is properly rejected without the necessity of another formal withdrawal of the lands for that specific purpose.

Calvin B. Neeley, A-30235 (Oct. 12, 1964)

As a result of the general withdrawals accomplished by Executive Orders Nos. 6910 and 6964 and the provisions of sec. 7 of the Taylor Grazing Act, a State's application for indemnity school lands is a petition to classify the lands as suitable for State selection and until classification the lands are not available for selection.

State of Utah, A-29461 et al. (Oct. 30, 1964)
71 I. D. 392

EXECUTIVE ORDER 6964

As a result of the general withdrawals accomplished by Executive Orders Nos. 6910 and 6964 and the provisions of sec. 7 of the Taylor Grazing Act, a State's application for indemnity school lands is a petition to classify the lands as suitable for State selection and until classification the lands are not available for selection.

State of Utah, A-29461 et al. (Oct. 30, 1964)
71 I. D. 392

POWER SITES

Final proof for a homestead initiated by settlement is properly rejected as to land that was within power site classifications at the time when the settlement was made.

Durwood Cotton, C. J. McIntyre, A-29968 (Mar. 11, 1964)

A mining claim located before Aug. 11, 1955, on land within an existing powersite reservation is null and void because the land was then unavailable for mining location.

Wayne England, A-30088 (Apr. 13, 1964)

RECLAMATION WITHDRAWALS

Land within a reclamation withdrawal, even though within an irrigation district, and designated under the Smith Act of Aug. 11, 1916; is not subject to desert land entry.

Ina Jean Lang, A-29926 (Feb. 25, 1964)

Land withdrawn for reclamation purposes can be opened to location under the mining laws only where the land is known or believed to be valuable for minerals; consequently, nonmineral land in a reclamation withdrawal cannot, in the absence of other considerations, be opened for location of a mill site, which is locatable only on nonmineral land.

In opening reclamation withdrawn land to mining location it is necessary that each 10-acre subdivision be mineral in character but it is not

WITHDRAWALS AND RESERVATIONS--Continued

RECLAMATION WITHDRAWALS--Continued

required that every acre of the 10-acre tract be mineral in character; consequently where a tract of land is open to mining location and part of the land is nonmineral in character, that part of the land can be included in a mill site.

Rex N. and Mildred B. Anderson, A-29881 (Apr. 24, 1964) 71 I. D. 140

Where the Commissioner of Reclamation revoked a reclamation withdrawal under authority delegated by the Secretary of the Interior, which delegation of authority required the concurrence by the Bureau of Land Management in the action taken by the Commissioner of Reclamation, the land remained withdrawn in the absence of such concurrence.

Mining claims located on land within a first-form reclamation withdrawal which was not open to mineral entry are properly declared null and void ab initio.

Robert K. Foster et al., A-29857 (June 15, 1964)

An application for homestead entry based upon a settlement claim initiated in 1924 on land then withdrawn for the construction of irrigation works is properly rejected because the land was not open to settlement at the time of the settlement claimed or thereafter.

Sarah Marie Woolf Widow of Glenn Roy Woolf, A-30140 (Oct. 6, 1964)

REVOCATION AND RESTORATION

Where land in Alaska is restored from a withdrawal and the State of Alaska does not exercise its statutory preference right to apply for the land within the 90-day period thereafter but does apply to select the land at a later time after an intervening offer for an oil and gas lease is filed, it is proper to give the State selection priority of consideration and to suspend action on the offer pending approval of the selection.

Union Oil Company of California, A-29905 (Mar. 30, 1964)

WITHDRAWALS AND RESERVATIONS--Continued

REVOCATION AND RESTORATION--Continued

Where the Commissioner of Reclamation revoked a reclamation withdrawal under authority delegated by the Secretary of the Interior, which delegation of authority required the concurrence by the Bureau of Land Management in the action taken by the Commissioner of Reclamation, the land remained withdrawn in the absence of such concurrence.

Robert K. Foster et al., A-29857 (June 15, 1964)

An oil and gas lease offer is properly rejected when it is filed subsequent to the issuance of a public land order revoking a prior order withdrawing the land applied for where the restoration order provides that the land involved shall not be open to applications and offers under the mineral leasing laws until a certain date, which is subsequent to the date of the filing of appellant's offer.

W. W. Priest, A-30232 (July 13, 1964)

Where a public land order revoking a prior withdrawal states that a part of the land restored shall not be subject to the initiation of any rights or any disposition under the public land laws until so provided by a classification order, and no such order has been issued, or having been issued has been canceled, an application to enter the lands under the Small Tract Act is properly rejected.

Cecil W. Hinshaw, A-30006 (July 23, 1964)

TEMPORARY WITHDRAWALS

A temporary withdrawal of oil shale deposits and lands containing such deposits from lease or other disposal for the purposes of investigation, examination, and classification, made by the President under the authority of the act of June 25, 1910, continues in effect until revoked by the President or by act of Congress, and applications for oil shale leases on such withdrawn lands are properly rejected.

Allan E. Mecham et al., A-30244 (Dec. 23, 1964)

WORDS AND PHRASES

Lands which are "made" as that term is used in section 2(a)(3) of the Submerged Lands Act of May 22, 1953, 67 Stat. 29; 43 U.S.C., sec. 1301 et seq., include lands which are formed by natural processes as well as those which are man made.

Interpretation of the Submerged Lands Act, M-36665 (Jan. 31, 1964) 71 I.D. 20

See Solicitor General's Opinion December 20, 1963, p. 22

"Available for leasing," as used in 43 CFR 192.42(d) and decisions interpreting that regulation, means lands which are available for noncompetitive leasing under the Mineral Leasing Act.

Empire State Oil Company, Jack J. Grynberg, A-29761 (Mar. 6, 1964) 71 I.D. 92

Actual drilling operations. The term "actual drilling operations" as used in section 4(d) of the Mineral Leasing Act Revision of 1960 means the actual boring of a well with drilling equipment and does not include such preparatory work as grading roads and well sites and moving equipment on the lease.

Michigan Oil Company, A-29828 (July 10, 1964) 71 I.D. 263

Congress has frequently used the word "homestead" in connection with the allotment of land to Indians to indicate merely that the land allotted was to be subject to special status and the use of the word "homestead" in the Alaska Allotment Act, 34 Stat. 197, as amended, 70 Stat. 954, is not necessarily indicative of an intention to

WORDS AND PHRASES--Continued

superimpose the requirements of the general homestead laws on the express requirements of the Alaska statute.

Allotment of Land to Alaska Natives, M-36662 (Sept. 21, 1964) 71 I.D. 240

Title, Fish and Wildlife. Such title as a State may hold to wild animals is a trust interest for the benefit of its citizens, not a possessory title.

Authority of the Secretary of the Interior to Manage and Control Resident Species of Wildlife Which Inhabit Wildlife Refuges, Game Ranges, Wildlife Ranges, and Other Federally Owned Property Under the Administration of the Secretary, M-36672 (Dec. 1, 1964) 71 I.D. 469

Entry. An "entry," within the meaning of the act of September 5, 1914, permitting a second homestead entry where a prior entry has been lost for reasons beyond the control of the entryman, includes the filing of an allowable homestead application in Alaska which is withdrawn by the applicant before it is allowed.

Raymond L. Gunderson, A-30134 (Dec. 2, 1964) 71 I.D. 477

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